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SECURITY DEPOSITS

A Thesis

Presented to

The Judge Advocate General's School, United States Army

The opinions and conclusions expressed herein are those of the author and do not necessarily represent the views of either The Judge Advocate General's School, The United States Army, or any other governmental agency.

by CPT Andrew McCoy Warner, JA  
Army

35TH JUDGE ADVOCATE OFFICER GRADUATE COURSE

April 19807

## **SECURITY DEPOSITS**

by CPT Andrew McCoy Warner

**ABSTRACT:** This thesis examines current state laws concerning security deposits, analyzes trends in the changing of those laws, and discusses how those changes have effected the military. This thesis concludes the turbulence in landlord-tenant law unfolds excellent opportunities for the military community and that these opportunities need to be exploited to the benefit of the soldier-tenant while mindsets, community practices, and the law are still being settled.

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## I. INTRODUCTION

On 15 August 1983, General Wickham, The Army Chief of Staff, specified a philosophy toward the family in the Army Family White Paper. General Wickham's action was in response to three Army family symposia conducted in 1980, 1981 and 1982 consisting of large numbers of Army family members. Evident from these meetings was that Army family programs lacked focus or priority, and General Wickham took note. He directed the issues identified by the meetings be categorized, staffed and given a priority. Issues were divided into four themes; relocation, medical, family support and role identity, and education and youth. Each issue was given to an appropriate staff, update reports were made mandatory, and milestones were established. As yearly reports were made, revisions occurred. In the first revision, in 1984, thirty-six issues were added to the thirty-one issues from the initial lot, and it was here the issue of security deposits arose.<sup>1</sup>

The Army's action to the issue of security deposits will be thoroughly discussed in this paper. The Army's action comes now, on the heels of what has been termed a "revolution"<sup>2</sup> in landlord-tenant law, when laws concerning security deposits have rapidly changed. The entire balance between landlord and tenant has been under transformation over the last two decades, and it is now — while the area is still unsettled — that effective reform is most likely. The Army is wise to move now, perhaps serving as a leader in the reform, and thereby secure true and lasting benefits for soldiers.

To understand the complexity and difficulty in an Army approach to problems presented by diverse security deposit laws, a thorough understanding of existing security deposit laws is in order. This thesis will first summarize the changes in landlord-tenant law that have resulted from

the revolution, and then discuss the various states' laws. Finally, the Army's approaches will be covered.

## II. A BRIEF LOOK AT THE "REVOLUTION"

Up until the mid 1960's, landlord-tenant law closely followed the law of conveyance of land and was largely based on common law. In the area of security deposits,<sup>3</sup> at common law there was no limit on the size of the deposit, the landlord had no obligation to pay interest on the deposit, and the landlord could commingle the tenants' deposits with the landlord's personal funds. If the landlord failed to return the deposit, the tenant could sue for its return, but the tenant was not normally entitled to recover punitive damages or attorneys' fees. The result was the landlord held virtually all the power, and the landlord dictated the terms on which the property would be leased. The system projected the rule, caveat lessee (let the renter beware).<sup>4</sup>

The social changes of the 1960's, however, had effect on the relationships between landlord and tenant. While it was recognized security deposits served legitimate landlord interests, it was also obvious security deposits were susceptible to abuse. Tenants had to initiate legal action to recover wrongfully held deposits, and the cost of collecting through legal channels was often prohibitive. Thus, there was an incentive for landlords to improperly retain security deposits.<sup>5</sup> It was during this time there was an awakening in the consumer protection area resulting in a proliferation of acts to stop deceptive practices and unfair trade.<sup>6</sup>

There was also an awakening of the contractual nature of the landlord-tenant relationship and a significant shift occurred. Arising from the contractual nature of the relationship came a burgeoning body of rights for the tenants, and corresponding responsibilities for the landlords.<sup>7</sup> A



"revolution" was underway that is still being felt today.<sup>8</sup> Since the mid 1960's, thirty-six states have enacted security deposit statutes, two of which have effective dates in 1987.<sup>9</sup> Though the statutes protect both the landlord and the tenant, the vast majority of statutes place responsibilities on landlords, and give previously unrecognized rights to tenants.<sup>10</sup>

While landlord-tenant law has retained much of the law of conveyance, it has continually recognized more and more common ground with the law of contracts. Most significantly, contract law has imposed an implied warranty of habitability<sup>11</sup> on landlords. That is, landlords must provide at the inception of the lease, and maintain during the tenancy units which are in substantial compliance with those provisions of local housing codes materially affecting health and safety.<sup>12</sup> At issue still today is what remedial measures are required or allowed when a warranty of habitability is broken? Some jurisdictions allow a tenant to make the repairs and deduct the cost from the rent,<sup>13</sup> while others range from not requiring rent while deficiencies exist to holding rent in receivership.<sup>14</sup> The remedy is guided by the analysis used by the court in determining from where the implied warranty came.

The two leading cases addressing the source of the implied warranty are Javins v. First National Realty Corp., 428 F.2d 1071 (D.C. Cir.), cert. denied, 400 U.S. 925 (1970), and Lemle v. Breeden, 51 Hawaii 426, 462 P.2d 470 (1969). The Javins Court held a landlord owed a duty to tenants to keep the unit free of substantial housing code violations, and that the source of the duty was the housing code itself. The Lemle court dealt more with a "true" implied warranty, one arising out of the contractual nature of the rental agreement. In Lemle, the Court found the tenant's obligation to pay rent was dependent on the landlord's performance of the implied warranty. The major difference between the two approaches is that the contractual implied warranty in the Lemle-type case can be waived, the statutory duty recognized in Javins cannot.<sup>15</sup>

Furthermore, contract law places the burden upon the landlord to covenant "the premises are fit for the use intended by the parties"<sup>16</sup> as that is the contemplation of parties acting in "good faith"<sup>17</sup> today. The concept of good faith also arises from contract law, and is being cited both by courts and legislatures in their attempts to settle this area of the law. It is also recognized and enforced by the Model Code.<sup>18</sup> Simply put, the good faith requirement calls for both parties to deal in a straight-forward, honest manner as reasonable people. Though it is readily apparent the good faith requirement deals a blow to the relative power of the landlord, it also forces the tenant to concessions. For example, where a landlord may have once failed to disclose housing code violations when renting to an unsuspecting tenant, the landlord acting in good faith would now have to correct the deficiencies (or at least notify the tenant and make arrangements to correct them). At the same time, the tenant who once may have stopped paying rent until the landlord acted on the tenant's grievance must now, under good faith, continue paying rent and follow notification procedures for correcting grievances.

The reasons for the evolution of contract principles are to eliminate self-help remedies that are not conducive to living in an organized society.<sup>19</sup> Codification of these principles is little more than recognizing the maturing of the landlord-tenant law, and at issue today is the drawing the line between the theoretical and the practical in the maturing process. There may even be a step left in the revolution of the landlord-tenant relationship stemming from the good faith and implied warranty of habitability requirements. Professor Cunningham views the landlord-tenant relationship as even moved past one based on "contract," to one based on "status."<sup>20</sup> Recognition of such a development by the courts would inevitably lead to even more rights for tenants.<sup>21</sup>

### III. EXAMINATION OF THE STATES' STATUTES

The individuality of the fifty states is apparent when one examines their approaches toward drawing the line between the theoretical and the practical in security deposit law. Since there is no federal law mandating how security deposits shall be handled, each state has determined what is best for its people. Five states have decided not to enact legislation in this area.<sup>22</sup> Nineteen states have substantially adopted the Uniform Residential Landlord-Tenant Act (URLTA),<sup>23</sup> a model code approved by the National Conference of Commissioners on Uniform State Laws in 1972.<sup>24</sup> This Act extends the concept leases are contractual in nature as it views leases as bilateral contracts rendering performance of many of its obligations interdependent.<sup>25</sup> The remaining twenty-six states and the District of Columbia have enacted statutes varying greatly in their approach to what should be versus what works in the area of security deposits.

An examination of the states' laws will provide bases for comparison, analyzing trends, and discussing the effect of the changing law on the Army. To establish a foundation upon which comparisons may be made and to facilitate analysis, this paper addresses eight predominant factors found in security deposit statutes. Though not all eight factors are found in each state's statutes, these eight factors are listed for the sake of consistency with each state that has enacted at least some legislation in the area.

The eight factors are:

1. Prerequisites. Prerequisites are required in some states before the statute applies. For example, some states require that a landlord rent a certain number of units before the landlord is required to pay interest on security deposits.<sup>26</sup>

2. The security deposit. That particular state's definition, the maximum amount allowed, whether the landlord may or must place the deposit in escrow, put it in a state bank, commingle it with other funds, or pay interest on it, is summarized here.<sup>27</sup>

3. Landlord requirements. This covers the restrictions placed on the landlord before the landlord may retain a portion of the security deposit.<sup>28</sup>

4. Time requirements. Many states place time limits on the landlord to inspect the property before a tenant leaves; to notify the tenant of damages and the landlord's intent to retain the security deposit; and to return the security deposit (or its remainder). Also, some states require a tenant to object or respond within a certain time. All such time restrictions are given here.

5. Notification procedure. How the landlord is to notify the tenant (and vice versa) is covered under this section.

6. Transferee liability. Once property changes hands, who is liable to the tenant for return of the security deposit? Though it is almost universal that the obligation transfers with the interest, some states keep the prior landlord jointly liable.

7. Penalties. Penalties may be assessed against landlords who wrongfully fail to return security deposits. The maximum penalty and whether the tenant may recover attorney fees and court costs are summarized here.<sup>29</sup>

8. Tenant requirements. Some states require action by the tenant once the landlord has notified the tenant of an intent to retain the security deposit. These and any other requirements placed on the tenant are covered here.<sup>30</sup>

If a state has not addressed one of the factors, that factor will be noted, "statute does not address this."

These eight factors have been the subject of legislation as it is in these areas disputes are most likely to occur, or potential problems may be quelled. The second factor, "the security deposit," is often defined by statute so there is no misunderstanding as to its purpose. Tenant deposits may perform various functions such as lease application fees, bonus for lease execution, rent security, cleaning security, and liquidated damages for other breaches of the lease. Without legislation, questions arise about what function the deposit was meant to perform and whether the deposit was a debt, a pledge, or a trust.<sup>31</sup>

The landlord, tenant, and time requirements give specific guidance on what must be done, by whom, and when it must be completed. Legislation in these areas is an attempt to codify the "good faith" rule by spelling out what is reasonable in a particular state. The notification procedure category indicates how the two parties are to correspond with one another so as to alleviate misunderstandings due to missed communications. Transferee liability is legislated to resolve issues arising from a landlord's insolvency or the transfer of the leased property to a new owner. And, penalties are legislated to put parties on notice of the ramifications for their failure to abide by the code.

The summaries are intentionally succinct and are intended in the spirit of an "All States Guide" — that is, the summaries are a quick synopsis, meant only as a starting point for research. This is not intended to cover the law completely, nor is it intended to be a substitute for the advice of a competent attorney. As noted throughout this paper, the law is continually changing. In fact, a number of states currently have landlord-tenant reform bills before their legislatures.

**Uniform Residential Landlord and Tenant Act (URLTA)**

**Statutes:**

Found in 7B Uniform Laws Annotated 430, Master Edition, 1985.

Security Deposits: § 2.101.

Note: the URLTA was approved by the National Conference of Commissioners on Uniform State Laws in 1972. The URLTA has been substantially adopted by the following states:

Alaska  
Arizona  
Delaware  
Florida  
Hawaii  
Iowa  
Kansas  
Kentucky (later held by a Kentucky court to be unconstitutional)  
Montana  
Nebraska  
Nevada  
New Mexico  
North Carolina  
Ohio  
Oklahoma  
Oregon  
Tennessee  
Virginia  
Washington

**Prerequisites:** This act concerns landlord-tenant relationships under rental agreements for residential purposes. The Act does not apply to rental agreements made for commercial, industrial, agricultural or any purpose other than residential. The Act imposes an obligation of good faith in its performance and enforcement.

**The security deposit:**

Maximum - One month rent.

Interest - Not required.

Deposited - Statute does not address this.

Commingleing - Permitted. The URLTA does not in any way limit the use of the deposit during the tenancy. The drafters felt that difficulties in administration and accounting outweigh the benefit accruing to the tenant by reasons of such restrictions.

**Landlord requirements:**

- Maintain dwelling unit in habitable condition.
- Mitigate damages.

**Time requirements:** The landlord will itemize damages in a written notice and deliver the notice, along with the amount due, to the tenant within fourteen days after termination.

**Notification procedures:** A person "notifies" another by taking steps reasonably calculated to inform the other in ordinary course, whether or not the other actually comes to know of it. Thus, a person "receives" notice

when (1) it comes to his attention; (2) it is delivered to his place of business; or (3) it is delivered by hand or mailed by registered or certified mail to his last known residence.

**Transferee liability:** The holder of the landlord's interest at the time of termination is bound by this section.

**Penalties:** Landlord's failure to comply entitles tenant to recover the property and money due together with twice the amount wrongfully withheld plus reasonable attorney's fees.

**Tenant requirements:**

- Maintain dwelling unit.



## **Alabama**

### **Statutes:**

The Alabama Code does not address the issue of security deposits. Security deposits are a matter of contract written between a landlord and a tenant. Alabama's Landlord and Tenant statutes are found in ALA. CODE §§ 35-9-1, -100 (1975 & Supp 1986).

## **Alaska**

### **Statutes:**

Uniform Residential Landlord and Tenant Act (eff. Mar. 19, 1974).

ALASKA STAT. §§ 34.03.010, - .080 (1985).

Security Deposit: § 34.03.070.

The Alaska Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

The statute states, "This chapter constitutes a basic reform of landlord-tenant law, according tenants previously unrecognized rights by recognizing the contractual nature of landlord-tenant relationship." McCall v. Fickes, Sup. Ct. Op. No. 1335 (File No. 2611), 556 P.2d 535 (1976).

**Prerequisites:** None.

**The security deposit:** Prepaid rent or security, however denominated, given to the landlord to secure performance of the lease.

Maximum - Two months rent.

Interest - Statute does not address this.

Deposited - In a trust account.

Commingling - Permitted to commingle with other security deposits in one account.

**Landlord requirements:** Provide tenant the terms and conditions under which the deposit may be withheld.

Landlord must itemize damages and accrued rent in a written notice to tenant, accompanying return of deposit.

**Time requirements:** Landlord has fourteen days to return the security deposit if properly notified of forwarding address; otherwise, thirty days.

**Notification procedures:** Mail is sufficient.

**Transferee liability:** New landlord is liable.

**Penalties:** Two times the actual amount withheld.

**Tenant requirements:** Notify landlord of forwarding address.

## Arizona

### Statutes:

Arizona Residential Landlord and Tenant Act (eff. August 8, 1973).

ARIZ. REV. STAT. ANN. §§ 33-1301, - 1381 (1974 & Supp. 1986).

Security Deposit: § 33-1321.

See also Arizona Legal Services Practice Manual, p. 6-17.

The Arizona Residential Landlord and Tenant Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**The security deposit:** Two deposits may be required by a landlord. One, a cleaning and redecorating deposit, has no statutory limit. The security deposit—money given to assure payment or performance under a rental contract—is limited to two months rent.

Maximum - Statute does not address this.

Interest - 5% required on any security or cleaning deposits.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** To retain cleaning deposit, landlord must have originally given written notice to tenant that the fund was non-refundable.

Landlord must itemize damages and deliver written notice to tenant if the full security deposit is not returned.

**Time requirements:** Landlord must account for (not necessarily return) the security deposit within fourteen days of: (1) end of tenancy and (2) vacating of premises and (3) tenant's demand.

**Notification procedures:** Tenant demand may be oral, but should be by certified mail for proof of delivery.

**Transferee liability:** New landlord is liable.

**Penalties:** If not returned or properly accounted for within fourteen days, tenant is entitled to the amount wrongfully retained plus twice that amount. Tenant's attorneys should be able to recover fees.

**Tenant requirements:** Tenant must make a demand for return of the security deposit and provide a forwarding address.

## Arkansas

### **Statutes:**

ARK. STAT. ANN. §§ 50-525, - 530 (Supp. 1985).

Security Deposit: §§ 526, -8.

**Prerequisites:** Landlord must rent more than five units except when managed by a third party.

### **The security deposit:**

Maximum - Two months rent.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Landlord must make good faith effort to find tenant (by mail is sufficient). If, after 180 days tenant has not been found, the deposit becomes property of the landlord.

**Time requirements:** Landlord has thirty days to return security deposit along with written list of damages.

**Notification procedures:** First class mail is sufficient.

**Transferee liability:** New landlord is liable.

**Penalties:** Two times the amount wrongfully withheld plus costs and attorney's fees. That is, unless there is a good faith dispute, then tenant is only entitled to the security deposit and court costs.

**Tenant requirements:** Provide landlord a forwarding address.

## California

### **Statutes:**

CAL. CIV. CODE § 1950-5 (West 1978 & Supp. 1987) (eff. Jan. 1, 1978).

**Prerequisites:** None.

**The security deposit:** All payments, besides rent, made by tenant regardless of stated or intended purposes. However, landlord and tenant may agree on structural, decorative or furnishing alterations for a fee, if the agreement is made at the tenant's request.

Maximum - Unfurnished: Two months rent plus first month's rent.

Furnished: Three months rent plus first month's rent.

If lease is for more than six months, landlord can require first six months of rent to be paid up front.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Landlord must provide an itemized written notice within two weeks of the basis for, and the amount of, any deposit withheld.

**Time requirements:** Landlord has two weeks to return the security deposit along with the notice.



**Notification procedures:** Personal delivery or first-class mail, postage prepaid.

**Transferee liability:** New landlord is liable if deposit has been transferred. Old landlord is relieved only when transfer is complete and tenant has been notified.

**Penalties:** \$200 plus damages, plus 2% interest per month until paid. (Interest provision effective Jan. 1, 1987).

**Tenant requirements:** Statute does not address this.

## Colorado

### Statutes:

Colorado Security Deposit Act.

COLO. REV. STAT. §§ 38-12-101, - 103 (1973).

See also Construction of Colorado Wrongful Withholding of Security Deposits Act, 1 CLA 27.

Purpose of statute: "The Security Deposit Act was passed to control the practices of landlords who withhold, without justification, their tenant's damage deposits." Houle v. Adams State College, 190 Colo. 406, 547 P.2d 926 (1976).

**Prerequisites:** None.

**The security deposit:** Any advance or deposit, regardless of its denomination, to secure performance of the rental agreement.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingleing - Statute does not address this.

**Landlord requirements:** Landlord has burden of proof that his retention was not wrongful. Landlord must give written explanation and meet time

requirements. The statute's provision that a landlord's failure to provide notice causes the landlord to forfeit his claim for damages was invalidated by case law. (See Turner v. Lyon, 189 Colo. 234, 539 P.2d 1241 (1975)).

**Time requirements:** Landlord must give tenant a written explanation of reasons for retention within thirty days (sixty days if so agreed in the lease), along with remainder of deposit. If tenant objects, tenant must then give notice of intent to sue, wait seven days, and then file.

Action for treble damages must be brought within one year.

Action for actual deposit and attorney fees is governed by six year statute of limitations.

Note: "This section is designed to assist tenants in vindicating their legal rights and to equalize the disparity in power which exists between landlord and tenant in conflicts over relatively small sums." Martin v. Allen, 193 Colo. 395, 566 P.2d 1075 (1977).

**Notification procedures:** Landlord need send only written explanation to tenant's last known address, so, from the tenant's perspective, it's imperative to keep landlord informed as to current address. Tenant should keep evidence indicating landlord knew of new address.

**Transferee liability:** New landlord is liable if deposit has been transferred. Old landlord is relieved when transfer is complete and tenant has been notified.

**Penalties:** Treble damages for wrongful withholding, plus attorney fees and costs. To avoid the liability for treble damages, the landlord may return the full deposit within the seven days after tenant has given notice of intent to sue. Otherwise, landlord must show he was acting in good faith.\*

\*Evidence of landlord's good faith: "The discrepancy between the amount of a security deposit retained and the amount of actual damages proved by landlord is important evidence of his good faith." Guzman v. McDonald, 194 Colo. 160, 570 P.2d 532 (1977).

**Tenant requirements:** After expiration of thirty days (following vacation of premises), tenant must give notice of intent to bring suit. This is a condition precedent to recover treble damages. Then, tenant must wait seven days and file suit.

## Connecticut

### **Statutes:**

CON. GEN. STAT. ANN. §§ 47a-21, 22 (West 1978 & Supp. 1986).

**Prerequisites:** Landlord must lease four or more units for the penalties to apply.

**The security deposit:** Any advance rental payment other than first month's rent and a deposit for a key or special equipment.

Maximum - Two months rent (if tenant is sixty-two or older, one month rent).

Interest - Not less than 5 1/2% per year (effective Oct. 1, 1982). Landlord can either give interest to tenant, or deduct it from the rent. If lease terminates before anniversary, landlord must return interest within thirty days.

Deposited - In an escrow account.

Commingling - Not permitted.

**Landlord requirements:** Nonresident landlords must appoint the secretary of state as attorney on whom process may be served. Upon request and within seven days, the landlord must provide the commissioner the name of the institution where the deposits are maintained and the account numbers.

**Time requirements:** Landlord must send notice advising of damages within thirty days, and return security deposit and interest along with itemized list of damages within sixty days.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** New landlord is liable.

**Penalties:** Failure to pay interest or provide itemization within sixty days makes landlord liable for two times the amount due. Landlord cannot increase rent because of requirement to pay interest. To do so subjects landlord to \$100 fine.

If landlord fails to pay "in good faith" - \$250 fine. "Good faith" is presumed if landlord rents to less than four tenants or if landlord gave tenant a written list of damages.

If landlord fails to pay in "bad faith" - thirty days in jail and \$500 fine.

**Tenant requirements:** If tenant is ten days or more late on payment of rent, landlord has no obligation to pay interest for that month. Leave landlord a forwarding address.

## **Delaware**

### **Statutes:**

DEL. CODE ANN. tit. 25, §§ 5102, 5103, 5511 (1974 & Supp 1986).

### **Note:**

(1) The Delaware Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

(2) Recent legislation has given tenants numerous rights in the area of applications, ability to cancel within five days, and upon rejection of application.

(3) Military Clause: § 5509.

**Prerequisites:** None.

**The security deposit:** Any deposit by the tenant to the landlord to be held for the term of the lease.

Maximum - One month rent on contracts for one year or more.

Interest - Statute does not address this.

Deposited - Required to be deposited in a bank in an escrow account.

Commingleing - Not permitted.

**Landlord requirements:** Landlord's failure to provide notice of damages and return balance of deposit to tenant within fifteen days makes landlord not able to withhold any of the deposit.

**Time requirements:** Landlord has fifteen days to return the security deposit and provide tenant an itemized accounting of any deductions. Acceptance by tenant constitutes agreement on damages specified by landlord.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Statute does not address this.

**Penalties:** Failure to provide tenant an itemized accounting within thirty days entitles tenant to recover two times the amount of the deposit. If tenant does not provide a forwarding address, landlord remains liable for the security deposit only, for one year.

**Tenant requirements:** Provide landlord with a forwarding address. Object to statement of damages within prescribed time.



## District of Columbia

### **Statutes:**

The D.C. Code does not address security deposits. The District of Columbia's Landlord and Tenant statutes are found at D.C. CODE ANN. §§ 45-1401, -1432 (1981).

The information below was obtained from R. Schoshinski, American Law of Landlord and Tenant, 1980.

See also HOUSING REGS. D.C. § 103, art. 290, D.C. LAW 1-7, D.C. REGISTER at 291-292, § 2908 (July 17, 1975).

### **The security deposit:**

Maximum - One month rent.

Interest - Not less than 5% per year.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Statute does not address this.

**Time requirements:** Landlord has forty-five days to return the deposit along with a list of any discrepancies (withholdings).

**Notification procedures:** Statute does not address this.

**Transferee liability:** Statute does not address this.

**Penalties:** A landlord has a tacit lien upon the tenant's personal property located within the apartment for payment of rent.

**Tenant requirements:** Statute does not address this.

## Florida

### Statutes:

Florida Residential Landlord and Tenant Act (eff. July 1, 1973).

FLA. STAT. ANN. §§ 83.40, -64 (West 1976 & Supp 1986).

Security Deposit § 83.49.

Note: The Florida Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter.

**Prerequisites:** Landlord must rent five or more units. Interest requirement applies only when the deposit is held for more than six months.

**The security deposit:** Money deposited as security for performance of the agreement or as advanced rent (other than the next immediate rental period). Landlord has three choices with regards to handling the security deposit: (1) Put the deposit in a non-interest-bearing account in a state bank and not commingle the funds. (2) Put the deposit in an interest-bearing account in a State Bank, pay tenant at least 75% of the interest earned (or simple 5%), and not commingle funds; or (3) Post a surety bond and pay 5% interest - commingling is allowed.

Maximum - Statute does not address this.

Interest - Interest must be paid if, in fact, the deposit is held in an interest bearing account (for more than six months).

Deposited - In a state bank or post a surety bond.

Commingling - See three options above.

**Landlord requirements:** Landlord must notify tenant of landlord's obligations such as the following:

Landlord must notify tenant at commencement, in writing, the name and address of owner or owner's agent;

Landlord must notify tenant in writing, within thirty days, of the status of the security deposit (that is, which election the landlord has made, the interest rate to be paid, when interest will be paid, where the funds are held, and whether the funds are commingled); landlord's failure to provide an itemization of damages within the prescribed time causes landlord to forfeit his claim for damages.

**Time requirements:** Landlord has thirty days from receipt of the security deposit to notify tenant of security deposit status. Upon termination, the landlord has fifteen days to return the deposit with interest, or give the tenant notice of landlord's intent to withhold. (The notice is shown below). Landlord must return the balance of the deposit within thirty days after the date of the notice of intention.

**Notification procedures:** Personal delivery or certified mail to last known address. The landlord's notice of intent shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of \_\_\_\_\_ upon your security deposit, due to \_\_\_\_\_. It is sent to you as required by § 83.49(3), Florida Statutes. You are hereby notified that you must

object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to \_\_\_\_\_ (landlord's address) \_\_\_\_\_.

If the landlord fails to give the required notice within the fifteen day period, he forfeits his right to impose a claim upon the security deposit.

**Transferee liability:** Landlord shall transfer all deposits with interest to the new landlord. Once the transfer is complete (to include transmittal of a written receipt therefor), the old landlord is free from obligation (to hold such moneys. The transfer does not excuse the old landlord for any previous violations).

**Penalties:** The prevailing party is entitled to receive court costs and reasonable attorney's fees.

**Tenant requirements:** Tenant must object to landlord's notice within fifteen days after receipt or the landlord may make the deduction.

## Georgia

### Statutes:

GA. CODE ANN. §§ 61-601, -607, §§44-7-30, -36 (1982 & Supp. 1986).

Note: "The intent of this article is only to prevent the wrongful withholding of security deposits from tenants by landlords. Kimber v. Towne Hills Dev. Co., 156 Ga. App. 401, 274 S.E.2d 620 (1980).

**Prerequisites:** Landlord must rent ten or more units.

**The security deposit:** Money, or other form of security, held by the landlord on behalf of the tenant by virtue of a lease. This includes damage deposits, advance rent deposits and pet deposits, but does not include earnest money or pet fees which are not to be returned under terms of the agreement.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - In an escrow account, or landlord must post a surety bond.

Commingling - Statute does not address this.

**Landlord requirements:** Prior to giving a security deposit, a tenant may require the landlord to provide a written list of existing damage. The same is true at termination.

**Time requirements:** Within three days of termination, the landlord will inspect, itemize, and estimate cost of damages. Tenant has five days to ascertain accuracy of the list.

Landlord has one month to return a security deposit together with an itemized accounting for any money withheld.

**Notification procedures:** First class mail is sufficient. If the mail is returned and the landlord is unable to locate tenant after reasonable efforts, the deposit becomes property of the landlord ninety days after payment was mailed.

**Transferee liability:** Statute does not address this.

**Penalties:** If landlord fails to provide lists or escrow account, landlord forfeits right to withhold any of the deposit. If landlord fails to return any of the deposit required to be returned, landlord is liable for three times the amount wrongfully held plus attorney's fees.

**Tenant requirements:** If tenant requires landlord to provide a listing of existing damage, tenant must either accept the listing or except in writing. The same is true at termination. Tenant's claim shall be limited to those items to which the tenant specifically dissented.

## Hawaii

### Statutes:

Residential Landlord-Tenant Code, Chapter 524 HRS.

HAW. REV. STAT. §§ 521-1, -78 (1976 & Supp 1984).

Security Deposit: § 521-44.

### Note:

(1) The Hawaii Residential Landlord and Tenant Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter.

(2) The statutes codify the implied warranty of habitability.

**Prerequisites:** None.

**The security deposit:** The landlord cannot receive from the tenant, at the beginning of the lease, any money other than the first month's rent and a security deposit as provided by law. A security deposit is money given by the tenant to be held by the landlord to cover unpaid rent, repair damages, or otherwise compensate the landlord for tenant's failure to abide by the lease.

Maximum - One month rent.

Interest - Statute does not address this.



Deposited - Statute does not address this.

Commingling - Permitted (by implication. See § 521-44, last phrase).

**Landlord requirements:** Provide tenant notice, in writing, of the particulars for any withholding of a deposit, and an accounting of repairs.

Landlord's failure to provide itemization within prescribed time cause landlord to forfeit his claim for damages.

**Time requirements:** Landlord must return security deposit, within fourteen days, along with notification in writing of grounds for retention of any portion of the deposit. Landlord must include written evidence of costs (unless tenant wrongfully quits).

**Notification procedures:** Certified mail, return receipt requested.

**Transferee liability:** New landlord is liable.

**Penalties:** Security deposit plus costs (neither landlord nor tenant may be represented by an attorney at court).

**Tenant requirements:** Statute does not address this.

## Idaho

### Statutes:

IDAHO CODE § 6-321 (1979).

### Note:

(1) Section 6-320 is the legislature's version of the implied warranty of habitability. The Idaho Supreme Court would not expand the common law by imposing on the landlord to keep premises in a habitable state where the legislature had already acted in same area. Worden v. Ordway, 105 Idaho 719, 672 P.2d 1049 (1983).

(2) Military Clause: § 55-2010.

**Prerequisites:** Statute does not address this.

**The security deposit:** Any money other than payment of rent is considered a security deposit.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** See "Time requirements".

**Time requirements:** If no time is stated in the lease, the landlord must refund the security deposit within twenty-one days. In any event, landlord must return the deposit within thirty days of termination along with an itemized statement of any damages, the purpose for the amount retained, and a detailed list of expenditures.

**Notification procedures:** Personal delivery, leaving at one's place of business, or sending by certified mail, return receipt requested.

**Transferee liability:** New landlord shall be liable for refund of deposits.

**Penalties:** Three times the actual damages.

**Tenant requirements:** Statute does not address this.

## Illinois

### **Statutes:**

ILL. REV. STAT., Ch. 80, § 101; 101.1, 121, 122 (1987).

**Prerequisites:** The statute applies to landlords renting ten or more units. Requirement to pay interest on security deposit applies only to landlords renting twenty-five or more units, and only when the deposit is held for more than six months.

**The security deposit:** A deposit to secure payment of rent or compensation for property damage.

Maximum - Statute does not address this.

Interest rate - 5% per year, payable within thirty days after end of each twelve month rental period

Deposited - Statute does not address this.

Commingleing - Statute does not address this.

**Landlord requirements:** Landlord must provide tenant with paid receipts for repairs for which deposit was withheld. This may be done at time of notice or within thirty days of first notification to tenant. Failure to do so causes landlord to forfeit his claim for damages.

**Time requirements:** Landlord has thirty days to provide tenant with itemized statement and cost of repairs. If estimated cost is given, landlord has thirty more days from date of initial notice to provide tenant with paid

receipts. If no statement is provided within thirty days, the landlord must return the security deposit in full within forty-five days of the date tenant vacated.

**Notification procedures:** Delivered in person or by mail to last known address.

**Transferee liability:** New owner is liable to tenant for any deposit the old owner transferred. But, old owner remains jointly and severally liable with new owner for the deposit.

**Penalties:** Wrongful withholdings of security deposit — twice the deposit due plus court costs and attorney fees.

Wrongful withholding of interest — amount equal to deposit plus costs and fees.

**Tenant requirements:** When tenant is in default, landlord does not have to pay interest.

## **Indiana**

### **Statutes:**

Indiana has not enacted any security deposit legislation. Indiana's Landlord/Tenant Statutes are IND. CODE §§ 32-7-1-1, -18 (1980 & Supp. 1986).

## **Iowa**

### **Statutes:**

Uniform Residential Landlord and Tenant Law (eff. Jan. 1, 1979).

IOWA CODE ANN. §§ 562A.1, - .37 (Supp. 1986).

Security Deposit: § 562A.12.

Note: The Iowa Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** None.

### **The security deposit:**

Maximum - Deposit and prepaid rent cannot exceed two months rent.

Interest - Any interest earned during the first five years is the landlord's.

Deposited - In a separate account for tenants, and must be federally insured.

Commingling - Not permitted.

**Landlord requirements:** Disclose to tenant in writing, the manager and person authorized to act on landlord's behalf.

Provide a written statement showing specific reasons for withholding.

**Time requirements:** Landlord has thirty days to return the deposit or provide notification, but tenant must have first provided landlord with a forwarding address. If tenant does not provide an address within one year, the deposit reverts to the landlord.

**Notification procedures:** Mail or personal service.

**Transferee liability:** Landlord must transfer the deposit to the new landlord and notify tenant of the transfer. Once landlord complies, new landlord is liable.

**Penalties:** \$200 plus actual damages and fees.

**Tenant requirements:** Provide forwarding address or delivery instructions.



## **Kansas**

### **Statutes:**

Kansas Residential Landlord & Tenant Act (eff. July 1, 1975).

KAN. STAT. ANN. §§ 58-2540, - 2573 (1983).

Security Deposit: § 58-2550.

**Note:** The Kansas Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** None.

**The security deposit:** Any sum of money, however denominated, given as a condition precedent to occupancy, which may be forfeited by the tenant for a breach of the lease.

Maximum —

Unfurnished - One month rent.

Furnished - 1 1/2 months rent.

With pets - Two months rent.

Interest - Not required (unless a municipal housing authority).

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Both parties (landlord and tenant) are required to get together and inventory the premises within five days of delivery of the apartment. Each party will sign the inventory. Landlord must notify tenant in writing of manager and a person authorized to act on behalf of the owner to receive notices and demands.

**Time requirements:** Landlord must return the deposit or provide tenant with written itemization of damages within fourteen days of determining the amount of expenses, damages, and charges. In no event, however, can the landlord exceed thirty days after termination and demand by the tenant. If tenant fails to make such a demand within the thirty days, the landlord shall mail the security deposit to the tenant's last known address.

**Notification procedures:** Mail is sufficient.

**Transferee liability:** New landlord is liable.

**Penalties:** Tenant may recover 1 1/2 the amount of the security deposit wrongfully withheld.

If tenant deducts security deposit from last month's rent, tenant forfeits deposit and landlord may recover rent due.

**Tenant requirements:** Provide forwarding address and make demand for return of security deposit at termination.

**Note:** Kansas statute states that when termination of tenancy is necessitated by military orders only a fifteen day written notice is required.

## Kentucky

### Statutes:

Uniform Residential Landlord and Tenant Act (eff. Aug. 1, 1974).

KY. REV. STAT. ANN. §§ 383.500, - .715 (Michie/Bobbs-Merrill 1972 & Supp. 1986).

Security Deposit: § 383.580.

Note: The Kentucky Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

Kentucky adds a section which reads:

383.500. Local governments authorized to adopt provisions of the Uniform Residential Landlord and Tenant Act in their entirety and without amendment.--The general assembly hereby authorizes cities, counties and urban-county governments to enact the provisions of the Uniform Residential Landlord and Tenant Act as set forth in KRS 383.505 to 383.700. If adopted, these provisions shall be adopted in their entirety and without amendment. No other ordinance shall be enacted by a city, county or urban-county government which relates to the subjects embraced in this Act.

The Kentucky version has been held to be unconstitutional by a Kentucky court.

**Prerequisites:** Statute does not address this.

**The security deposit:** A fund deposited to secure performance of a rental agreement.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - In a bank or institution regulated by the state or United States Government.

Commingling - Not permitted.

**Landlord requirements:** Inform tenants of the location of the security deposit account and the account number. Provide the tenant with a list of existing damage. Both landlord and tenant will sign the inventory.

Landlord is not entitled to retain deposit if deposit was not placed in a separate account, and initial and final damages listings were not prepared.

**Time requirements:** The statute does not specify when the security deposit must be returned. However, landlord may retain deposit if tenant does not respond to landlord's notice within sixty days.

**Notification procedures:** Personal delivery or by registered or certified mail.

**Transferee liability:** Statute does not address this.

**Penalties:** Statute does not address this.

**Tenant requirements:** Dissent in writing to any objections on landlord's damage lists. Tenant must respond to landlord's notification of refund due within sixty days or landlord may keep the deposit.

## **Louisiana**

### **Statutes:**

LA. REV. STAT. ANN. §§ 9,3251, - .3254 (West 1983 & Supp. 1987).

**Prerequisites:** Statute does not address this.

**The security deposit:** Any advance of money by a tenant to a landlord to secure performance of a lease.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Send tenant an itemized statement accounting for any deposit retained.

**Time requirements:** Landlord has one month to return the deposit or provide an itemized statement, an accounting, and reasons for the retention.

**Notification procedures:** Make written demand by certified mail to the last known address, by personal delivery, or by tacking the written demand on the door of the leased premises.

**Transferee liability:** Landlord shall transfer the deposit to the new landlord; landlord shall then be relieved of further liability.

**Penalties:** Tenant may recover actual damages or \$200, whichever is greater. A court may award costs and attorney fees. Landlord's failure to return deposit within thirty days after tenant's written demand shall constitute willful failure.

**Tenant requirements:** Provide a forwarding address. Failure by tenant to pay delinquent rent within twenty days after delivery of written demand makes tenant liable for attorney fees upon judgment.

## **Maine**

### **Statutes:**

ME. REV. STAT. ANN. tit. 14, §§ 6031, -6038 (1964 & Supp. 1986).

Note: The statutes codify the implied warranty of habitability.

**Prerequisites:** The statute does not apply to any tenancy for a dwelling which is part of a structure containing no more than five dwelling units, one of which is occupied by the landlord.

**The security deposit:** Any advance of money to secure performance of a rental agreement.

Maximum - Two months rent.

Interest - Statute does not address this.

Deposited - In a separate account for tenants.

Commingleing - Not permitted.

**Landlord requirements:** Landlord must place deposits in a bank or other financial institution under such terms that the deposits are beyond the claim of creditors of the landlord. Upon request, the landlord shall disclose the name of the institution and the account number where the deposits are held.

**Time requirements:** Landlord must return the deposit, or itemization with reasons, within thirty days (or sooner if so specified in the agreement).

**Notification procedures:** Landlord is deemed to have complied by mailing statement and any payment to the last known address of tenant.

**Transferee liability:** Upon transfer, landlord shall, within a reasonable time, transfer the security deposit to the successor, or return the funds to the tenant. Upon compliance with the statute, the landlord is relieved from liability.

**Penalties:** Landlord forfeits right to withhold any portion of the deposit if landlord fails to provide a written statement or return the deposit within the specified time. For willful retention of a deposit in violation of statute, landlord is liable for double that portion wrongfully withheld, plus fees and costs.

**Tenant requirements:** Should landlord fail to return the deposit or provide itemized statement within the proper time, tenant shall give notice to the landlord of tenant's intent to bring suit no less than seven days prior to commencing action. If landlord doesn't return deposit within that seven day period, it is to be presumed landlord is willfully and wrongly retaining the deposit.



## **Maryland**

### **Statutes:**

MD. REAL PROP. CODE ANN. §§ 8-203, - 203.1 (1981).

Military Clause: § 8-212.1.

**Prerequisites:** Any landlord who offers more than four units at one location has additional requirements as specified in § 8-203.1 (e.g., provide prospective applicants a copy of the proposed lease upon their written request).

**The security deposit:** Any payment of money, including payment of last month's rent in advance, to protect landlord against nonpayment of rent or damage to the premises. It is not liquidated damages.

Maximum - Two months rent or \$50, whichever is greater, per dwelling unit, regardless of the number of tenants.

Interest - 4% per year, only on deposits of \$50 or more. Landlord may retain interest earned in excess of 4%.

Deposited - In a Maryland state bank within thirty days.

Commingling - Not permitted.

**Landlord requirements:** Notify tenant at time security deposit is paid of right to be present at inspections.

Landlord must provide a receipt for the security deposit, and is liable for \$25 for failure to do so. The receipt may be included in a written lease. The receipt shall inform the tenant of tenant's statutory rights. If requested in writing within fifteen days of occupancy, landlord shall provide tenant a written list of existing damages. Landlord shall maintain security deposits in a state institution in an interest bearing account devoted exclusively to security deposits.

**Time requirements:** Action for excessive charge may be brought during tenancy or within two years of termination. Landlord shall return the security deposit with interest within forty-five days, less any damages rightfully withheld. Tenant must notify landlord of tenant's desires to be present for inspection fifteen days prior to moving. Inspection will be within five days (before or after) moving date. Landlord has thirty days from termination of tenancy to send tenant a written list of damages with a statement of costs actually incurred.

**Notification procedures:** Use certified mail, except for landlord's notice to tenant of damages and actual costs — there, first-class mail directed to last known address of the tenant may be used.

**Transferee liability:** In the event of transfer, the security deposit and its interest is binding on the successor. Security deposits are free from any attachment by creditors.

**Penalties:** If landlord charges more than the maximum, tenant may recover up to three times the extra amount charged, plus reasonable attorney fees. Failure to provide tenant with list of damages (once tenant properly requests such a list) renders landlord liable for three times the amount of the security deposit.

**Tenant requirements:** If tenant wants a written list of existing damages, tenant must make a written request of the landlord within fifteen days of occupancy. At termination, tenant has right to be present for landlord's inspection provided tenant notifies landlord by certified mail of tenant's intention to move, the date of moving, and the new address. The notice shall be mailed at least fifteen days prior to moving date. Landlord shall then notify tenant by certified mail of time and date of inspection. The inspection shall be within five days (before or after) of moving date.

## **Massachusetts**

### **Statutes:**

MASS. GEN. L. ANN., ch. 186 § 15B (1977 & Supp. 1986).

Note: Purpose of security deposit law is to assist tenants in residential property, who, as a practical matter, are generally in inferior bargaining positions and find traditional avenues of redress relatively useless in that legal expenses of chasing security deposit would be more than amount of such deposit. Shwanchman v. Khoroshansky, 448 N.E.2d 409, 15 Mass. App. 1002 (1983).

**Prerequisites:** Interest requirement applies only to deposits held one year or longer.

### **The security deposit:**

Maximum - One month rent (in addition to first and last month's rent and lock/key).

Interest - 5% per year.

Deposited - In a separate, interest bearing account within the Commonwealth.

Commingling - Not permitted.

**Landlord requirements:** Maintain a detailed record system of deposits, required lists, and other pertinent security deposit correspondence, and make such records available for tenant inspection during normal business hours. If last month's rent is required, landlord must give tenant a receipt detailing date received, amount, purpose, and that tenant is entitled to 5%

interest on the money. It shall also inform tenant of tenant's need to provide a forwarding address.

The same requirement exists for security deposits, plus the landlord must notify tenant of the location and account number. In addition, landlord must provide tenant a written statement of the present condition of the premises within ten days. This statement will contain a listing of any violations of sanitary or building codes, and contain directions to the tenant in bold-face type.

**Time requirements:** Tenant has fifteen days to sign the landlord's list, or submit a separate signed list. Failure to do so creates a presumption the landlord's list was complete and correct. If tenant sends a new list, landlord then has fifteen days to return tenant's list with a rebuttal. At termination, landlord must return the deposit, less proper reductions, together with a sworn itemized accounting for sums withheld within thirty days. Landlord must retain records on deposits for two years after termination.

**Notification procedures:** Statute does not address this.

**Transferee liability:** Landlord must transfer security deposits to new landlord. Once this is done, new landlord is liable. The new landlord is also responsible for informing the tenant of the transfer within forty-five days.

**Penalties:** Three times the amount wrongfully withheld, plus 5% interest, costs and reasonable attorney's fees.

For failure to maintain security deposit records, tenant is entitled to immediate return of the deposit plus interest.

**Tenant requirements:** Provide a forwarding address.

## Michigan

### Statutes:

MICH. COMP. LAWS ANN. §§ 554.601, -.616 and § 26.1138 (West 1967 & Supp. 1986).

Note: The statutes codify the implied warranty of habitability.

**Prerequisites:** Landlord must notify tenant within fourteen days of possession of landlord's name and address, the financial institution, and — **in bold type** — the tenant's obligation to provide a forwarding address (within four days of vacating). Inventory checklists are required.

**The security deposit:** Any sum other than the first full rental period returnable to the tenant on condition of return of rental unit.

Maximum - 1 1/2 months rent.

Interest - Bills are pending requiring interest be paid (Senate Bill No. 285 seeks 5% per year for landlords with more than four units; House Bill No. 4697 seeks 10% per year for tenants living in a unit not less than three years).

Deposited - In a regulated financial institution

Commingle - Permitted if landlord secures a bond.

**Landlord requirements:** Landlord must follow statutory requirements involving notice of landlord's obligations. These include initial and final checklists, time requirements, bold face notices, and accounting of damages. Failure to do so causes landlord to forfeit rights to withhold.

**Time requirements:** Landlord shall furnish tenant inventory checklist at commencement. Tenant notes condition of property and returns copy to landlord within seven days. Within thirty days after termination, landlord must provide itemized list of damages, the amounts and bases on which he intends to assess, and the deposit difference. Tenant has seven days from receipt to respond.

**Notification procedures:** Tenant may respond by ordinary mail--date of mailing is considered the date of response. Before retaining any portion of a security deposit, landlord must, within forty-five days after termination, commence an action for a money judgment, unless tenant has failed to respond, has otherwise agreed, or the amount is based on unpaid rent.

**Transferee liability:** Original landlord remains liable until the deposit is transferred to successor with written notice to tenant; successor complies with statute for retention; or security deposit is returned to tenant.

**Penalties:** Failure to comply makes landlord liable for double the security deposit.

**Tenant requirements:** Complete and return inventory checklist; provide forwarding address to landlord within four days of vacating; object to landlord's statement of damages within prescribed time.

## Minnesota

### Statutes:

28 MINN. STAT. ANN. § 504.20 (West Supp. 1987).

Note: The statutes codify the implied warranty of habitability.

**Prerequisites:** Statute does not address this.

**The security deposit:** Any deposit of money to secure the performance of a residential rental agreement, other than a deposit which is exclusively an advance payment of rent.

Maximum - Statute does not address this.

Interest - 5 1/2% per year.

Deposited - Statute does not address this.

Commingle - Statute does not address this.

**Landlord requirements:** See "Time requirements."

**Time requirements:** Landlord has three weeks after termination to return the deposit, or furnish the tenant a written statement showing specific reasons for withholding. If landlord fails to comply with the statute, retention is presumed to be in bad faith unless the landlord returns the deposit within two weeks after commencement of any action to recover the deposit.



**Notification procedures:** Notification by first class mail within the time required is sufficient.

**Transferee liability:** Upon transfer, landlord shall, within a reasonable time, either transfer the deposit to the new landlord and notify tenant of new landlord's name and address or return the deposit to the tenant. Either action will relieve original landlord from further liability.

**Penalties:** Landlord's failure to provide a written statement within three weeks of termination subjects landlord to penalty of two times the portion of the deposit wrongfully withheld, plus interest. Bad faith retention by a landlord of a deposit or interest thereon subjects landlord to punitive damages not to exceed \$200 more.

**Tenant requirements:** Tenant may not withhold payment of last month's rent. To do so creates a presumption the security deposit should serve as payment. If tenant does this, landlord can keep the deposit and also collect the rent. Tenant must make a demand for return of the deposit and leave a forwarding address.

## Mississippi

### Statutes:

The Mississippi statutes do not address security deposits. The Landlord and Tenant statutes are found at MISS. CODE ANN. §§ 89-7-1, -125 (1972 & Supp. 1986).

## Missouri

### **Statutes:**

MO. ANN. STAT. § 535.300 (Vernon Supp. 1987)

**Prerequisites:** Statute does not address this.

**The security deposit:** Any deposit of money to secure the performance of the lease and to cover damage, but it does not include any deposit for a pet.

Maximum - Two months rent.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Landlord must provide tenant a reasonable written notice of an inspection for damages and tenant must be allowed to attend.

**Time requirements:** Landlord must return the deposit within thirty days and provide the tenant an itemized listing of any damages causing a withholding.

**Notification procedures:** Statute does not address this.

**Transferee liability:** Statute does not address this.

**Penalties:** Two times the amount wrongfully withheld.

**Tenant requirements:** Provide a forwarding address.

## Montana

### Statutes:

Residential Landlord and Tenant Act of 1977 (eff. July 1, 1977).

MONT. CODE ANN. §§ 70-24-101, -442 (1985).

Security Deposits: §§ 70-25-101, -206.

**Note:** The Montana Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** The requirement for landlords to provide an initial checklist applies only when security deposits are required.

**The security deposit:** Any deposit from the tenant to the landlord, to be held for the term of the lease, to secure payment for damage to and cleaning of the premises.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Note:** Landlord may be able to deduct, at end of tenancy, 1% of deposit for administrative and custodial expenses.

**Landlord requirements:** Landlord must provide tenant an initial checklist of the property's condition, along with a copy of the damage and cleaning charges of the previous tenant.

At termination, landlord must notify tenant if there are cleaning expenses, and given tenant forty-eight hours to remedy the situation before any money is withheld for cleaning. Failure to do so causes landlord to forfeit rights to withhold.

**Time requirements:** Landlord must return the security deposit within thirty days unless tenant damages cause a withholding. In that case, landlord must provide tenant with an itemized listing of damages and expenses within thirty days, together with the balance of the deposit.

**Notification procedures:** Delivery is accomplished by mailing to tenant's last known address or the new address provided by the tenant.

**Transferee liability:** Old landlord remains liable to tenant for all security deposits and prepaid rent.

**Penalties:** If landlord does not send the deposit within thirty days, landlord is liable to tenant for two times the amount of the deposit plus costs and fees.

**Tenant requirements:** Leave landlord a forwarding address in writing. Failure to do so relieves the landlord from the double liability (but tenant may still recover the original security deposit).

## Nebraska

### **Statutes:**

Uniform Residential Landlord and Tenant Act (eff. July 1, 1975).

NEB. REV. STAT. §§ 76-1401, -1449 (1986).

Security Deposits: § 76-1416.

Note: The Nebraska Act is an adoption of the Uniform Act, but it adds a number of additional sections (76-1440 through 76-1449).

**Prerequisites:** Statute does not address this.

### **The security deposit:**

Maximum - One month rent (with pet, 1 1/4 months rent). Landlord may collect advance rent as well.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Disclose to tenant the name of address of manager and an owner or person authorized to receive notices and demands.

**Time requirements:** Upon demand, the tenant has a right to receive, within fourteen days, the balance of the deposit and an itemization of any costs paid out of the deposit.

**Notification procedures:** Personal delivery or mail. Notification is complete from the time the transaction is brought to the individual's attention, or, it would have been brought to his attention had he or his organization exercised reasonable diligence.

**Transferee liability:** New landlord is liable.

**Penalties:** Tenant may recover the property and money due plus costs and attorney's fees.

**Tenant requirements:** Make a demand for return of the deposit and leave a forwarding address.

## **Nevada**

### **Statutes:**

Residential Landlord-Tenant Act.

NEV. REV. STAT. ANN. §§ 118A.010, -.530 (1986).

Security Deposit: § 118A.240, -260.

Note: The Nevada Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** If the landlord rents at least seven units.

**The security deposit:** Any payment used for covering unpaid rent, repairing damages or for cleaning. It does not include a payment to secure an option to purchase.

Maximum - Total deposits, including cleaning deposit, security deposit and last month's rent may not exceed three months rent. (A cleaning deposit, in a reasonable amount, may be nonrefundable provided that it is specified in the agreement).

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.



**Landlord requirements:** Provide tenant a receipt upon request. Furnish tenant in writing the name and address of the manager, person authorized to receive notices and demands, and the owner. This may be accomplished by posting such information in two conspicuous places.

**Time requirements:** Upon termination, the landlord must, within thirty days, provide the tenant with an itemized written accounting of the disposition of the deposit and return the remaining portion. Otherwise, the entire deposit must be returned without any deduction.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Upon the transfer of the security deposit to the new landlord, and notification of such to the tenant, the new landlord becomes liable.

**Penalties:** Two times the entire deposit.

**Tenant requirements:** Provide a forwarding address.

## New Hampshire

### Statutes:

N.H. REV. STAT. ANN. § 540-A:5-8 (1983).

See also It Helps to Know the Law . . . ABOUT SECURITY DEPOSITS, a public education pamphlet by Community Legal Education, N.H. Legal Assistance, 1986.

**Prerequisites:** The statute does not apply to: (1) tenants who rent a single family home from a landlord who does not own any other rental property, or (2) tenants under the age of sixty who live in a building with less than six apartments and whose landlord lives in the same building.

To get interest on the security deposit, it must be held more than one year.

**The security deposit:** Any money given to landlord other than rent.

Maximum - One month rent or \$100, whichever is larger.

Interest - Landlord must pay tenant at least the amount of interest actually earned on the deposit, or 5% if it was not in an interest bearing account. If the deposit is returned within one year, no interest is owed.

Deposited - In a trust account.

Commingling - Not permitted.

**Landlord requirements:** Landlord must give tenant a receipt for the security deposit. The receipt must inform the tenant what bank the deposit is in (or that a bond has been posted with the town clerk to guarantee return of the deposit), and it must inform tenant that tenant has five days to give landlord a list of existing defects in the apartment.

**Time requirements:** Landlord has thirty days to return the deposit with interest, or send a written statement with itemized cost of repairs.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Statute does not address this.

**Penalties:** Two times the deposit plus interest.

**Tenant requirements:** Statute does not address this.

## **New Jersey**

### **Statute:**

N.J. STAT. ANN. §§ 46:8-19, -25 (West 1940 & Supp. 1986).

**Prerequisites:** Statute does not apply to rental of owner occupied premises with not more than two rental units. Requirements for depositing and paying interest change when ten or more units are rented.

**The security deposit:** Deposit as security for performance of lease or to be applied to payment of agreement when due.

Maximum - 1 1/2 months rent.

Interest - Paid at current rate on all deposits and advances of money, less 1% for administrative expenses.

Deposited - Must be placed in an interest bearing account within the state.

Commingling - Not permitted. (All security deposits may be placed in one account, but they may not be commingled with the landlord's personal funds).

**Landlord requirements:** Notify tenant within thirty days of the bank where security deposit is located. Landlord's failure to notify tenant where the deposit is located allows tenant to apply the security deposit towards rent without having to make further security deposits.

Provide tenant with name and address of owner and manager.

**Time requirements:** Landlord shall return security deposit plus interest within thirty days, along with an itemized accounting of any withholdings. If tenant is forced to move out by an unforeseen cause (e.g., fire or flood), landlord must return the security deposit plus interest within five days, if so requested.

**Notification procedures:** Personal delivery, registered or certified mail.

**Transferee liability:** New landlord is liable.

**Penalties:** Two times the security deposit plus court costs and attorney's fees.

**Tenant requirements:** Statute does not address this.

## **New Mexico**

### **Statutes:**

Uniform Owner-Resident Relations Act (eff. July 1, 1975).

N.M. STAT. ANN. §§ 47-8-1, -51 (1978).

Security Deposits: § 47-8-18.

Note: The New Mexico Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter.

**Prerequisites:** None.

**The security deposit:** Any deposit, excluding last month's prepaid rent, paid to secure performance of the lease.

Maximum - One month rent for tenancy less than one year.

Interest - Current passbook rate on deposits greater than one month. rent, paid annually.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Disclose in writing to tenant the name and address of the manager and a person authorized to receive notices and demands.

**Time requirements:** Landlord has thirty days to return the deposit along with a written itemization of deductions and reasons therefore.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Upon transfer and notification of such to tenant, the new landlord becomes liable.

**Penalties:** If landlord fails to comply, tenant may recover the money due plus costs and attorney's fees.

**Tenant requirements:** Designate the location where payment may be made or mailed.

## **New York**

### **Statutes:**

N.Y. GEN. OBLIG. LAW §§ 7-101, -107 (McKinney 1978 & Supp. 1987).

**Prerequisites:** Interest requirement applies to landlord renting six or more family units.

**The security deposit:** Any deposit as security for performance of the lease, or to be applied to payment of agreement when due.

Maximum - Statute does not address this.

Interest - Must be paid if actually earned, less 1% administration expense.

Deposited - In an interest bearing account with the state.

Commingling - Prohibited. If commingling occurs, tenant is entitled to the immediate return of the security deposit. (However, landlords have been able to avoid liability by segregating the deposit before a suit for recovery is concluded).

**Landlord requirements:** Notify tenant of name and address of where the deposit is located.

**Time requirements:** Statute does not address this.

**Notification procedures:** Personal delivery or registered or certified mail.



**Transferee liability:** Landlord must transfer deposit to new landlord. The transfer relieves the old landlord of liability. Failure to transfer and notify tenant is a misdemeanor.

**Penalties:** Statute does not address this.

**Tenant requirements:** Statute does not address this.

## **North Carolina**

### **Statutes:**

Tenant Security Deposit Act.

N.C. GEN. STAT. §§ 42-50, -56 (1984).

**Note:** The North Carolina Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** Act applies to everyone renting residential units except those renting single rooms.

**The security deposit:** Security deposits are permitted to cover nonpayment of rent, damages, early terminations, unpaid bills, re-renting costs after a breach, and removal and storage costs of tenant's property.

**Maximum -** Two months rent if lease is greater than month to month. A nonrefundable fee for pets may be charged.

**Interest -** Statute does not address this.

**Deposited -** Security deposit must be held in trust or secured by a bond.

**Commingleing -** Statute does not address this.

**Landlord requirements:** Notify tenant within thirty days of the name and address where the deposit is located.

**Time requirements:** Landlord must return security deposit within thirty days along with itemized list of damages for any deposit withheld.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** New landlord is liable if deposit has been transferred. Old landlord is relieved when transfer is complete and tenant has been notified.

**Penalties:** Upon willful noncompliance, the court may award the tenant the money due plus costs and attorney's fees.

**Tenant requirements:** Provide a forwarding address. If tenant does not provide a forwarding address, landlord must hold the deposit for six months, then it becomes property of the landlord.

## **North Dakota**

### **Statutes:**

N.D. CENT. CODE § 47-16-07.1 (1978 & Supp. 1985).

**Prerequisites:** Security deposit must be held for more than nine months for interest requirement to apply.

### **The security deposit:**

Maximum - One month rent.

Interest - Accrued interest.

Deposited - In a federally insured interest-bearing account established solely for security deposits.

Commingling - Not permitted.

**Landlord requirements:** Landlord shall provide tenant with a statement describing the condition of the facilities at the time of the rental agreement. Both parties shall sign the statement, and the statement shall be proof of the conditions at the beginning of the lease. Itemize damages for which any deposit is retained.

**Time requirements:** Deposit shall be delivered or mailed, along with itemization, to tenant within thirty days of termination of the lease.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Landlord shall transfer security deposit and interest to new landlord. Landlord is not relieved of liability until such transfer is complete. The new landlord is bound by this statute even though the new landlord was not the original lessor.

**Penalties:** Three times any deposit withheld without reasonable justification.

**Tenant requirements:** Statute does not address this.

## Ohio

### **Statutes:**

OHIO REV. CODE ANN. §§ 5321.01, -19 (Anderson 1981 & Supp. 1985).

Security Deposit: \$ 5321.16.

Note: The Ohio Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** Requirement to pay interest applies only when tenant remains in unit for more than six months.

**The security deposit:** A fund deposited to secure performance of a rental agreement.

Maximum - Though the statute does not place a limit on security deposits, it does impose requirement to pay interest on any amount over one month rent.

Interest - 5% per year on deposits in excess of one month rent, and interest is only paid on that amount over the one month rent.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** See "Time requirements".

**Time requirements:** Landlord must return the security deposit within thirty days after tenant moves and itemize charges for damages.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Statute does not address this.

**Penalties:** If landlord has tenant's forwarding address and does not comply with the law, tenant may sue for two times the amount owed plus costs and attorney's fees. If tenant fails to provide forwarding address, then tenant is not entitled to damages or fees.

**Tenant requirements:** Provide landlord forwarding address in writing.

## Oklahoma

### **Statutes:**

Oklahoma Residential Landlord and Tenant Act (eff. Oct. 1, 1978).

OKLA. STAT. ANN. tit. 41, §§ 101, -136 (West 1986).

Security Deposit: tit. 41, § 115.

Note: The Oklahoma Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

**Prerequisites:** Statute does not address this.

**The security deposit:** Deposit required as a security or damage pledge.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - In an escrow account within the state and is federally insured.

Commingling - Statute does not address this.

**Landlord requirements:** Disclose to tenant in writing the name and address of the manager and a person authorized to receive notices and service of process.



**Time requirements:** Landlord must return security deposit along with itemized list of deductions within thirty days.

**Notification procedures:** Delivered in person or by registered mail.

**Transferee liability:** Upon transfer of security deposit to new landlord and notification of such to tenant, the new landlord becomes liable.

**Penalties:** Misappropriation of a security deposit is punishable by six months in jail and a fine of twice the misappropriated funds.

**Tenant requirements:** Tenant must make written demand for return of the security deposit within six months.

## Oregon

### **Statutes:**

Residential Landlord and Tenant Act (eff. Oct. 5, 1973).

OR. REV. STAT. §§ 91.700, -.895 (1984).

Security Deposit: § 91.760.

**Note:** The Oregon act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions, and additional matters.

**Prerequisites:** Statute does not address this.

**The security deposit:** Any payment of money, however designated, to secure performance of a lease. It does not include advance rent, a payment to secure the execution of a rental agreement, or a fee clearly designated as nonrefundable.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:**

- Provide tenant with copy of lease.
- Disclose in writing the name and address of the manager and a person authorized to receive notices and demands.

**Time requirements:** Landlord has thirty days to give the tenant a written accounting which states specifically the bases for the claim, and to return the balance.

**Notification procedures:** Though the statute does not address this specifically, caselaw indicates a landlord's invitation to come to the landlord's home where landlord would give tenant an accounting was not sufficient. Ellsworth v. Gladden, 36 Or. App. 385, 584 P.2d 774 (1978).

**Transferee liability:** New landlord is liable.

**Penalties:** Two times the amount wrongfully withheld.

**Tenant requirements:** Statute does not address this.

## **Pennsylvania**

### **Statutes:**

PA. STAT. ANN. tit. 68, §§ 250.511a, -512 (Purdon 1965 & Supp. 1986).

**Prerequisites:** None.

### **The security deposit:**

Maximum - Two months rent for first year and one month rent thereafter.

Interest - Paid on deposits in excess of \$100 required during third and subsequent years; landlord may retain 1% per year for administrative expenses.

Deposited - In an escrow account if deposit is over \$100.

Commingling - Statute does not address this.

**Landlord requirements:** Notify tenant of location of deposit, if the deposit is in escrow.

**Time requirements:** Landlord must return security deposit along with itemized list of damages within thirty days. Failure to do so causes landlord to forfeit rights to withhold.

**Notification procedures:** Statute does not address this.

**Transferee liability:** Statute does not address this.

**Penalties:** Two times the security deposit.

**Tenant requirements:** Tenant must provide landlord forwarding address in writing for landlord to be held to the thirty day requirement. Failure to do so releases landlord from any liability.

## Rhode Island

### Statutes:

Rhode Island Residential Landlord and Tenant Act (eff. Jan. 1, 1987).

R.I. GEN. LAWS §§ 34-18-1, -56 (1986 Cum. Supp.).

Security Deposit: § 34-18-19.

See also Jones, The New Landlord-Tenant Act — Legislative Reform,  
Rhode Island Bar Journal, Vol. XXXV, No. 3, December 1986.

**Prerequisites:** Statute does not address this.

**The security deposit:** A sum of money given at the outset of the tenancy as a deposit against physical damages to the unit during the tenancy.

Maximum - One month rent.

Interest - Requirement to pay interest was eliminated in 1986.

Deposited - Statute does not address this.

Commingleing - Statute does not address this.

**Landlord requirements:** Itemize damages in written notice to tenant.

- Disclose, in writing, name, address and number of manager and, owner (or authorized representative), and to whom notices are to be delivered.

- Keep premises fit and inhabitable condition.

- Notify tenant in event of sale.

**Time requirements:** Landlord shall deliver deposit or notice within twenty days of termination.

**Notification procedures:** See statute for acceptable procedures for service of summons, complaint and answer.

**Transferee liability:** Once the landlord notifies the tenant in writing of the sale, and the conveyance occurs, the new landlord is liable by statute.

**Penalties:** Two times the amount wrongfully withheld plus reasonable attorney fees.

**Tenant requirements:** Provide a forwarding address.

## **South Carolina**

### **Statutes:**

South Carolina Residential Landlord Tenant Act (eff. July 1986).

S.C. CODE ANN. §§ 27-40-10, -940 (Law. Co-op. Supp. 1986).

Security Deposit: § 27-40-410.

**Prerequisites:** If landlord rents more than four adjoining units and imposes different deposit amounts, additional posting requirements (showing rationale) apply.

### **The security deposit:**

Maximum - Unlimited.

Interest - No requirement to deposit security funds into an interest-bearing account.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** Disclose, in writing at or before the commencement of the tenancy, the name and address of an owner or person authorized to act for the owner for notice purposes.

Keep premises in a fit and habitable condition.



**Time requirements:** Landlord has thirty days to return deposit along with written itemization from the date of termination and demand by tenant, whichever is later.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Landlord remains liable for security deposit until the security deposit is transferred and the tenant is notified in writing. After notice is given to the tenant, original landlord is relieved of liability.

**Penalties:** Three times the amount wrongfully withheld and reasonable attorney's fees.

**Tenant requirements:** Provide the landlord, in writing, a forwarding address.

## South Dakota

### **Statutes:**

South Dakota Codified Laws on Lease of Real Property.

S.D. CODIFIED LAWS ANN. §§ 43-32-6.1 and 43-32-24 (1983 & Supp. 1986).

**Prerequisites:** None.

**The security deposit:** Any deposit of money to secure performance of a rental agreement is a security deposit.

Maximum - One month rent unless special conditions pose a danger to maintenance of the premises.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** See "Time requirements."

**Time requirements:** Landlord has two weeks to return the deposit or furnish the tenant a written statement showing reasons for any withholding. Within forty-five days after termination, upon tenant's request, landlord shall provide tenant an accounting of any deposit withheld.

**Notification procedures:** Statute does not address this.

**Transferee liability:** Statute does not address this.

**Penalties:** \$200 maximum for bad faith retention.

**Tenant requirements:** Furnish mailing address or delivery instructions.

## Tennessee

### **Statutes:**

Uniform Residential Landlord and Tenant Act (eff. July 1, 1975).

TENN. CODE ANN. §§ 66-28-101, -516 (1983 & Supp. 1986).

Security Deposit: § 66-28-301.

Note: The Tennessee Act is a substantial adoption of the major provisions of the Uniform Act, but contains numerous variations, omissions and additional matter.

**Prerequisites:** Statute does not address this.

**The security deposit:** An escrow payment securing the landlord against financial loss due to damage by the tenant, other than wear and tear. "Security deposits" do not include advance rentals.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - In an account solely for security deposits.

Commingling - Not permitted.

**Landlord requirements:**

- Notify tenant of location and account number of the security deposit account.

- Provide tenant with name and address of manager and person authorized to receive notices and demands.

- At termination, compile a comprehensive listing of damages, and allow tenant to inspect to ascertain the accuracy of the list. Landlord may not retain any portion of a security deposit unless the security deposit was maintained in a separate account and the landlord provides the tenant with the required damage listing.

**Time requirements:** If tenant leaves without providing a forwarding address, landlord shall send notification to the last known address. In the event the landlord does not receive a response within sixty days, the landlord may keep the security deposit.

**Notification procedures:** Personal delivery or mail.

**Transferee liability:** Upon notice to tenant of conveyance, the new landlord is liable.

**Penalties:** If landlord fails to put security deposit in a separate account, landlord is not entitled to retain any portion of it. If tenant does not respond to landlord's notification within sixty days, the landlord may keep the deposit.

**Tenant requirements:** Provide landlord with a forwarding address. If tenant disagrees with landlord's list of damages, tenant should state the objections specifically, in writing, on the list.

## **Texas**

### **Statutes:**

Texas Landlord and Tenant Act (eff. September 1, 1973).

TEX. REV. CIV. STAT. ANN. §§ 92.101, -.109 (Vernon 1984 & Supp. 1987).

**Prerequisites:** Statute does not address this.

**The security deposit:** Any deposit, other than advance rent, to secure performance of a rental agreement.

Maximum - Statute does not address this.

Interest - Not required.

Deposited - Statute does not address this.

Commingleing - Statute does not address this.

**Landlord requirements:** See "Time requirements."

**Time requirements:** Landlord has thirty days to return the security deposit, along with an itemized list of all deductions. If failure to provide list is in bad faith, landlord forfeits right to withhold.

**Notification procedures:** Statute does not address this.

**Transferee liability:** New landlord is liable, regardless of whether tenant was notified or not.

**Penalties:** If bad faith occurs—three times the amount wrongfully withheld, plus \$100 and attorney's fees and court costs. If no bad faith is involved, tenant may only recover amount wrongfully held and court costs.

**Tenant requirements:**

- Provide landlord written notice of forwarding address.
- Give advance notice of surrender if required by lease in bold type.
- Tenant may not deduct security deposit from last month's rent. If tenant does, landlord may recover three times the rent wrongfully withheld and fees.

## Utah

### **Statutes:**

Residential Renters' Deposits.

UTAH CODE ANN. §§ 57-17-1, -5 (1986 Replacement).

**Prerequisites:** Statute does not address this.

**The security deposit:** Deposits, however denominated, to secure performance of a lease.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** At the outset, state in writing any part of the deposit that is to be non-refundable. See "Time requirements".

**Time requirements:** Landlord must return the security deposit along with an itemized list for any deposit withheld within thirty days of termination, or fifteen days after receipt of tenant's new address, whichever is later. (If there are damages, the landlord has thirty days—rather than fifteen—from receipt of a new address to return the money).

**Notification procedures:** Personal delivery or mail.



**Transferee liability:** New landlord is liable.

**Penalties:** \$100 plus the deposit and court costs, provided landlord received the new address within thirty days of termination.

**Tenant requirements:** Provide landlord with forwarding address or location where payment and notice may be made.

## Vermont

### Statutes:

Chapter 137. Residential Rental Agreements (eff. July 1, 1986).

VT. STAT. ANN. tit. 9, §§ 4451, -68 (Supp. 1986).

Security Deposits: § 4461.

**Prerequisites:** Statute does not address this.

**The security deposit:** Any advance, deposit or prepaid rent, however named, which is refundable to the tenant at the termination of the tenancy. The security deposit is to secure the performance of a tenant's obligation to pay rent and to maintain the unit.

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:** See "Time requirements."

**Time requirements:** Landlord shall return the deposit within fourteen days along with a written statement itemizing any deductions. If landlord fails to return the deposit and statement within fourteen days. The landlord must return the entire deposit.

**Notification procedures:** Hand delivered or mailed to last known address.

**Transferee liability:** Upon transfer, the security deposit will be transferred to the new landlord. The new landlord shall give the tenant notice of the new landlord's name and address along with a statement that the security deposit has been transferred.

**Penalties:** If the failure is willful, the landlord is liable for two times the amount wrongfully withheld, plus attorney's fees and costs.

**Tenant requirements:** Maintain the dwelling unit.

## Virginia

### Statutes:

Residential Landlord & Tenant Act (eff. July 1, 1974).

VA Code ANN. §§ 55-248.2, -.40 (1986 Replacement).

Security Deposit: § 55-248.11.

### Note:

(1) The Virginia Residential Landlord and Tenant Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

(2) Termination of lease by military personnel due to orders: § 55-248.21:1.

**Prerequisites:** The statute does not apply to a number of situations (listed in § 55-248.5). For example, the statute does not apply where there is an occupancy under contract of sale and the occupant is the purchaser. Also, where there is occupancy in single-family residences and the owner owns no more than ten units (four for condominiums).

Interest required only after thirteen months.

**The security deposit:** Any deposit of money or property, whether termed security deposit or "prepaid rent," however denominated, to secure performance of a lease or as security for damages to the premises.

Maximum - Two months rent.

Interest - 5% per year, accrued in six month increments, but only after thirteen months.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

**Landlord requirements:**

- Disclose name and address of manager and person authorized to receive notices and demands.

- If planned within six months, disclose any plan to displace tenant due to rehabilitation or demolition of the property.

- Provide locks and peepholes if requested by tenant and required by § 55-248.13:1.

- Provide tenant a list of existing damages within five days of occupancy.

- Provide tenant with a copy of the signed lease within one month of effective date.

Landlord must return security deposit along with itemized list for any deposit withheld within thirty days. Landlord must maintain itemized records for each tenant, and permit tenants to inspect records during normal business hours. Upon request by landlord for tenant to vacate, or within five days of notice by tenant to landlord, landlord will make a reasonable effort to advise tenant of tenant's right to be present at the

inspection of the apartment for the purpose of determining the amount of the security deposit to be returned. If the tenant desires to be present, tenant must notify landlord in writing. Landlord shall then notify tenant of date and time of the inspection — which must be done with seventy-two hours of termination. Upon completion of the inspection, the landlord shall provide tenant with an itemized list of damages.

**Time requirements:** Within thirty days of termination, landlord will return security deposit with itemized list of interest, deductions, damages and charges.

**Notification procedures:** Personal delivery or regular mail, postage prepaid, and sender retains proof of mailing.

**Transferee liability:** New landlord is liable.

**Transferee liability:** Failure to comply by landlord gives tenant the right to recover the security deposit, damages and attorney's fees.

**Tenant requirements:** If tenant objects to landlord's existing damages list, tenant must object in writing within five days of receipt of the list.

## Washington

### Statutes:

Residential Landlord-Tenant Act of 1973.

WASH. REV. CODE ANN. §§ 59.18.010, -.900 (Supp. 1987).

Security Deposit: § 59.18.270.

### Note:

(1) The Washington Act is a substantial adoption of the major provisions of the Uniform Act, but it contains numerous variations, omissions and additional matter.

(2) The statutes codify the implied warranty of habitability.

**Prerequisites:** If a security deposit is required, the lease must be in writing and include the terms and conditions under which the deposit may be withheld. A written checklist describing the condition and existing damages is also required.

- Occupancy under an option to purchase is not covered (other conditions are also exempted in § 59.18.040).

**The security deposit:** Money paid as security for performance of the tenant's obligations in a lease. No money which is nonrefundable may be designated as a security deposit.

Maximum - Statute does not address this.

Interest - Landlord is entitled to interest unless otherwise agreed upon in writing.

Deposited - In a trust account in a state bank or other financial institution, maintained by the landlord for the purpose of holding security deposits.

Commingling - Not permitted, but landlord is entitled to interest.

**Landlord requirements:**

- Provide tenant the "move in" checklist.
- Provide tenant a receipt for the security deposit and notify tenant of name and address of institution where security deposit is held.
- If any money is paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable.

**Time requirements:** Within fourteen days of termination, the landlord shall give a full and specific statement of the basis of retaining any security deposit, and return the balance.

**Notification procedures:** Personal delivery or by mail to last known address.

**Transferee liability:** Upon transfer, deposits will be transferred to the new landlord. New landlord shall promptly notify the tenant of the transfer, and the name and address of the new depository.



**Penalties:** Failure to provide statement together with refund within the time required makes landlord liable for full amount of the deposit. An intentional refusal allows tenant to seek twice the deposit plus costs and attorney's fees.

**Tenant requirements:** Complete the "move in" checklist.

## **West Virginia**

### **Statutes:**

The West Virginia statutes do not address the issue of security deposits. The West Virginia Landlord and Tenant statutes are found at W. VA. CODE §§ 37-6-1, -30 (1985). The statutes do codify the implied warranty of habitability.

## Wisconsin

### Statutes:

WIS. STAT. ANN. §§ 704.01, -40 (West 1981 & Supp. 1986).

Information on security deposits may be found in WIS. ADM. CODE § Ag. 134.06 and Landlords and Tenants, THE WISCONSIN WAY, Wisconsin Department of Agriculture, Trade and Consumer Protection Pamphlet.

**Prerequisites:** Disclosure of owner requirement does not apply to owner-occupied structures containing four or fewer units.

### The security deposit:

Maximum - Statute does not address this.

Interest - Statute does not address this.

Deposited - Statute does not address this.

Commingling - Statute does not address this.

### Landlord requirements:

- Furnish tenant with written itemization of damages for which deductions were made from previous tenant's security deposit.

- Disclose, before rental, all uncorrected housing code violations.

- Disclose name and address of owner or owner's representative for notification purposes.

- Provide tenant a receipt for the security deposit and notify tenant of tenant's right to be given at least seven days to notify landlord of existing damages.

- Provide in writing, reasons for withholding any portion of a security deposit.

**Time requirements:** Landlord shall return the security deposit within twenty-one days along with a written statement accounting for all amounts withheld (itemizing damages and cost of repair for each).

**Notification procedures:** Personal delivery or by mail to last known address.

**Transferee liability:** Unless provided in the lease, transfer does not relieve the transferring party of contractual obligations under the lease.

**Penalties:** Bad faith subjects landlord to actual damages equal to the deposit withheld, plus attorney's fees.

**Tenant requirements:** Provide landlord with a forwarding address.

## Wyoming

### Statutes:

The Wyoming statutes do not address the issue of security deposits. Wyoming Landlord and Tenant statutes are primarily found at WYO. STAT. §§ 34-2-101, -135 (1977).

#### IV. ANALYSIS OF THE STATE STATUTES

All states but five have enacted legislation dealing with security deposits, and even the five that do not address security deposits do have substantial landlord-tenant statutes. However, the states' approaches are as diverse as the states are different. Take, for example, the requirement to pay interest on security deposits. While seventeen states<sup>32</sup> (and one pending<sup>33</sup>) require landlords to pay interest on the deposits, four states' statutes<sup>34</sup> specifically say the landlords do not. One of the four, Washington, states any interest received on the deposits is the landlord's to keep unless otherwise agreed to in the lease. Then, even among those states that require the landlord to pay interest, the percentages vary, when the requirement starts differ, and the prerequisites change.

In the area of placing a maximum on the amount of a security deposit, again the states vary greatly. Nevada allows three months rent as does California for a furnished apartment. Eleven states allow two months rent,<sup>35</sup> three states permit one and one-half months rent,<sup>36</sup> and ten limit security deposit to one month rent.<sup>37</sup> The remaining states do not place a maximum on security deposits, thereby permitting by implication an unlimited amount be charged.

Besides maximums and interest requirements, two other areas concerning security deposits are commonly legislated. These two areas are requirements to deposit the money in particular accounts or institutions, and whether the landlord may commingle the security deposit funds with the landlord's personal money. Twenty states require landlords to place the deposits in a particular place,<sup>38</sup> usually an account specifically for security deposits in a state bank. Sixteen states prohibit the commingling of security deposit funds with the landlord's personal money.<sup>39</sup>

Were the same states enacting substantially the same legislation, then categorizing the states would be easy. However, take the requirement to place the deposits in a particular place for an example. This is a requirement that the URLTA, enacted substantially by nineteen states, chose not to address.<sup>40</sup> Yet nine of the twenty states requiring the deposits be placed in particular accounts are URLTA states.<sup>41</sup> Not only does that leave ten URLTA states without a similar requirement,<sup>42</sup> it also leaves a group of eleven states with common legislation outside the umbrella of the URLTA.<sup>43</sup>

This example illustrates the problem with trying to categorize states by the other areas commonly legislated such as the maximum or commingling issues. Because of the diversity in approaches by the different state legislatures, no natural breaking points or fracturing lines have developed. Though the most obvious dividing line is that of those states which have adopted the URLTA, the URLTA is often in contradiction to what appears to be an emerging trend. The one month security deposit maximum supported by the URLTA is found in only ten states.<sup>44</sup> While the URLTA does not require interest be paid, seventeen states (and one pending) do make such a requirement.<sup>45</sup> As previously mentioned, the URLTA does not address where security deposits must be deposited, while twenty states do legislate deposit placement.<sup>46</sup> Finally, the URLTA permits commingling of funds while sixteen of eighteen states that address the issue prohibit the commingling of funds.<sup>47</sup>

## V. CONCLUSION OF STATE STATUTE ANALYSIS

Whether at common law, under contract law, regulated by statute, or a part of a local program, security deposits pose consistent legitimate concerns for both landlord and tenant. Landlords want their property and contractual interests secured by a readily accessible financial source. Tenants need to know that if they abide by the lease and maintain the unit,

their deposit will be promptly returned. Legislation to accomplish these two objectives is diverse, dependent upon individual approaches by varying state legislatures.

Though categorizing states and predicting trends is not practical, general advice may be drawn from the various approaches to the security deposit issue. For landlords, it would be wise to require a security deposit equivalent to at least one month rent unless the landlord is participating in a program such as security deposit reduction that provides other security. The landlord should place the money in an interest bearing account and not commingle the deposit with his personal funds. It is advisable for both landlords and tenants to use check-in and check-out lists so that there is documentation to substantiate damage, and withholding disputes can be limited to the items noted on the lists. For tenants, the major concern is to insure the landlord has been provided a forwarding address. Also, any objection with a landlord over a withholding should be done in writing and in a timely manner.

The fact a revolution has occurred in landlord-tenant law over the last two decades — and the shift has been largely in favor of the tenant — is indisputable.<sup>48</sup> However, the continuation of the revolution or the drawing of conclusions to predict the future of the changes is not so readily apparent because of the lack of consistency in approaches or the emergence of trends. And, there is a growing feeling that the revolution has brought on the dichotomy that the numerous changes in favor of the tenant ultimately hurt the tenant.<sup>49</sup>

Furthermore, recent social, economic and political changes may significantly impact on future developments in this area. There has been a significant swing toward conservatism in the 1980's as opposed to the liberalism experienced in the 1960's and 1970's when the revolution began. The passing of the Gramm-Rudman Bill has ushered in a new era of federal



funding cutbacks,<sup>50</sup> and tax reform is now in place with one of its main targets being real estate. If the tax burden falls as heavily on the real estate investor as it first appears, or if other aspects of the revolution continue to erode the landlord's position, fewer people will be attracted to the real estate market. And, even for the people who do invest in real estate, there may not be the money available (due to tax laws) to meet the burden the courts and legislatures have placed on the landlords to keep up the property. When the benefits to be gained do not significantly outweigh the risks and hassles of being a landlord, the marginal housing units will disappear. It is this phenomenon that has a number of experts concerned about the expansion, and even the validity, of the recent "progressive" legislation in landlord-tenant law.<sup>51</sup>

Though a first glance may indicate the landlords will suffer most due to the tax shift, the ultimate fallout may be on tenants. This would be due to there being less money available to landlords to repair substandard apartments, as well as landlords passing on their losses to the tenants. Of political concern is the basic question, Does the law reflect what the parties would have bargained for with full knowledge and experience?<sup>52</sup> Probably not. The mainstream analyses argue that each increased tenant protection and landlord duty must ultimately be paid for by tenants.<sup>53</sup> "Those lease able to pay increased rents will lose more than they gain from additional protections."<sup>54</sup> A number of commentators have come to the conclusion, "To a great extent the laws are self-defeating. It is likely that as a result of them there will be less rental housing and that certainly means higher rents."<sup>55</sup> So, whether the changes will ultimately benefit the landlord or the tenant is yet to be determined, but changes will undoubtedly occur.

Finally, a change in one state's statute is not necessarily an omen of things to come, but being the most recent change it may be indicative of current attitudes. Rhode Island is the latest state to enact comprehensive

legislation in the landlord-tenant area, and it specifically addresses the security deposit issue.<sup>56</sup> Effective January 1, 1987, Rhode Island no longer requires interest be paid on security deposits. Just as interesting, Rhode Island did not choose to adopt the URLTA, as opposed to many states that have enacted comprehensive legislation.<sup>57</sup> In fact, it has been eight years since a state has adopted the URLTA. All the states that adopted the URLTA did so in the 1970's, the last being Iowa in 1979.<sup>58</sup> Perhaps the revolution is stabilizing, and while changes are certain to occur, the shifts may be more gradual as landlords and tenants solidify their positions.

## VI. EFFECT ON ARMY

The introduction to this thesis pointed out the Army has taken a serious look at the issue of security deposits. Perhaps a closer look at the reasons why the Army feels a need to act in this area will help establish where the Army needs to go. A few statistics will readily show why dealing with security deposit issues is important to the Army. There are approximately 233,000 soldiers E-1 to E-5 with families in the Army, approximately 78,000 of whom move every year.<sup>59</sup> Often, these young soldiers are obtaining apartments and utility service for the first time. With security deposits, advance rent and utility deposits now being almost universal requirements, the first timer can easily be overwhelmed. Even for the veteran, the amounts can be staggering. With major military installations in virtually every state, the impact of varying laws can have significant repercussions on individual soldier's financial situations, their ability to house, feed and clothe their families, their assignment desires, and correspondingly, their morale. Though a security deposit is only one facet in the overall scheme, the fact security deposits were targeted in the first revision of the major issues identified by the Family Symposia is a strong indicator that security deposit problems run deep — and are important.

## VII. ARMY APPROACHES

The Family Symposia of 1980-82 drew attention to inherent and systemic problems confronting Army families. General Wickham's response was the Army Family White paper in 1983 which stated the Army's philosophy toward the family:

A PARTNERSHIP EXISTS BETWEEN THE ARMY AND ARMY FAMILIES. THE ARMY'S UNIQUE MISSIONS, CONCEPT OF SERVICE AND LIFESTYLE OF ITS MEMBERS--ALL AFFECT THE NATURE OF THIS PARTNERSHIP. TOWARDS THE GOAL OF BUILDING A STRONG PARTNERSHIP, THE ARMY REMAINS COMMITTED TO ASSURING ADEQUATE SUPPORT TO FAMILIES IN ORDER TO PROMOTE WELLNESS; TO DEVELOP A SENSE OF COMMUNITY; AND TO STRENGTHEN THE MUTUALLY REINFORCING BONDS BETWEEN THE ARMY AND ITS FAMILIES.<sup>60</sup>

"The Family Action Plan" derived from the philosophy stated in the White Paper, and is the Army's instrument for making the transition from the present to the 1990's.<sup>61</sup> "The Family Action Plan" is a coordinated effort to staff, plan, recommend and implement programs to reduce or eliminate the problems enumerated by the symposia. The Family Action Plan publishes its own Department of the Army Pam (608-41) yearly which states the direction it is to take for the next year. It was in Family Action Plan II, 20 May 1985, security deposits were targeted for action.

Security deposits were one of thirty-six new issues added to the thirty-one issues from the original plan of 1984.<sup>62</sup> General Wickham tasked the Program Analysis and Evaluation Office of the United States Army Community and Family Support Center to attack the security deposit issue, and Dr. Richard Fafara became the program's point of contact.<sup>63</sup>

Dr. Fafara sent a message to the field in 1985 seeking information on what individual installations were doing in the area of security/utility deposits. As of 4 September 1985, eleven installations had utility waiver/reduction programs and three installations had rental deposit waiver/reduction programs.<sup>64</sup> The message also informed the installations of the Army's interest in this area, and encouraged both participation in such programs and input from successful programs. The Program Analysis and Evaluation Office (like other offices staffing one of the sixty-seven issues) was required to give yearly status reports and recommendations to the Deputy Chief of Staff for Personnel.

The 12 December 1986 update provided some interesting statistics. The number of installations having a utility waiver/reduction program had increased from eleven to thirty-seven, and rental waiver/reduction programs had increased from three to eleven. This increase resulted in over eleven million dollars in waivers to soldiers and their families.<sup>65</sup>

A full scale review and analysis of all security deposits programs is in progress, with results due by April 1987.<sup>66</sup> To be determined are which programs are most successful and whether the Army should implement a particular program Army wide. Listed below are brief summaries of suggested programs, programs that have been attempted, programs currently in progress, or programs soon to be implemented.

#### Nonappropriated Fund (NAF) Deposit Program

This program calls for NAFs to be used to make or guarantee security and utility deposits. That is, NAF's would actually be used rather than the individual's money, or, in the case of a guarantee, the deposit would be waived conditioned on the Government's guarantee to cover any damage or unpaid bill. The Government would then have to recover from the soldier (by withholding pay or other means).

### Security Deposit Indemnity Program

This program guarantees compensation to landlords for any breach of a lease or damage by a soldier. Participation by landlords is voluntary, with their incentive to join being: (1) an anticipated increased occupancy rate due to recognition by the Government; (2) an increase in qualified renters, and (3) full and timely payment for breaches of the lease. The benefit to the soldier, of course, is no initial outlay for a security deposit. In the case of a breach, the landlord must first exhaust available remedies to collect from the soldier, and then turn to the Government. The Government, in turn, may then collect from the soldier through withholding pay or other means.<sup>67</sup>

### Army Emergency Relief (AER)

Though AER isn't a utility or security deposit waiver or reduction program, it is a means by which the problem has been reduced. By providing soldiers with loans, the soldiers may more readily accumulate the money necessary for the initial outlay required. Similarly, when a soldier prepares to leave, AER loans may provide the means to settle unpaid bills and repair damages that are necessary for the soldier to clear.

### Advanced Pay and Variable Housing Allowance (VHA)

This is similar to the AER loan. The Government simply advances the soldier money to either pay off existing debts (so the soldier may clear), or so that the soldier has sufficient money to make initial deposits at the soldier's next assignment.

### Deposit by Allotment Program

This program breaks the deposit, whether security or utility, into monthly allotments. That is, the soldier is able to make the deposit over a period of time rather than all at once (e.g., twelve months). This program recognizes that security deposits seldom need to be retained during the tenancy, but rather they are needed at the termination for cleaning and repairs. The landlord is at risk should the tenant vacate prematurely. However, for either utilities or rent, the program provides that should the soldier ever be late in a payment, the company or landlord may immediately demand the payment due and a full security deposit.

### Bond Program

This program is similar to an insurance policy. The soldier pays a nonrefundable fee (e.g. \$25) to a bond company which, in turn, posts a bond for the amount of the security or utility deposit. Then, if the soldier damages an apartment or fails to pay a bill, the bond covers the expense.

### Credit Union Programs

These programs are prevalent in the utility deposit waiver/reduction area, as opposed to rental deposits. Various credit union programs exist, but the principle is the same. Generally, there is a three step process:

- (1) The soldier pays a nonrefundable fee to join the credit union (e.g. \$5.00).

- (2) The soldier then pays a nonrefundable fee to join the utility deposit waiver program (e.g. \$15.00).

(3) The soldier must agree to make a monthly allotment to the utility deposit account for a specified period of time (e.g., \$25.00 per month for twelve months). Note, however, the soldier must pay his bills as they come due — the allotments only serve as security. At the end of the specified period, the soldier may withdraw the money from the account, or leave it in as a savings account. In the process, the soldier has earned a good credit rating and built a savings account.

#### Deposit Reduction Program

This program calls for a voluntary reduction of the deposit in return for command emphasis placed at all levels to insure the prompt payment of debts. For utilities a reduced flat fee would be charged (e.g. \$25.00 for electric and \$50.00 for phone). This deposit would remain at that level until the soldier failed to make a payment on time. When that occurs, the company terminates the service until the soldier pays the full utility deposit plus the past due bill. For rental deposits, the landlords are asked to eliminate the requirement to pay last month's rent up front and reduce the security deposit to a reasonable amount (e.g., \$350.00). In return for the concessions offered by the utility companies and the landlords, the housing office becomes the key player in the command's emphasis to insure the debts are paid. Before a soldier is allowed to move on post, or clear post for a permanent change of station (PCS) (personal clearing through the housing personnel is an enforced requirement at participating installations), the housing office calls the companies and landlord to insure the soldier is current on payments. If the soldier is not, the housing personnel escort the individual to where he needs to go (bank, finance, AER, etc.) to make sure the debt is paid. Should the soldier not pay (perhaps due to being absent without leave), the housing office releases as much information as possible to assist the company or landlord track down the soldier (a privacy act waiver is required for entry into the program).

### VIII. BASIS FOR ANALYSES

The security deposit issue may be viewed as a representative slice of the Family Action Plan pie. Just as the Family Action Plan has shown on a large scale that in many cases issues were only symptoms, not root causes of problems,<sup>68</sup> the security deposit issue has shown often times it too may be a symptom and not necessarily a root cause of a problem.

To actualize the White Paper's broad, philosophical concepts, the Army implemented the Family Action Plan. The Plan provides a comprehensive way to direct efforts within available resources and in concert with other Army goals. Some solutions to identified issues are highly resource dependent, some require statutory changes, and others require further study. The Army's thrust is to tackle low cost/ high payoff initiatives first, and follow with high cost/high payoff initiatives when possible. Each initiative must, however, be evaluated in light of the Army's Human Goal objectives and be consistent with the philosophical guidelines of the White Paper.<sup>69</sup>

The Human Goal objective is to foster wholesome lives for Army families. By doing so, the Army contributes to its ultimate goal, total readiness. The three critical elements of the White Paper philosophy are partnership, wellness and sense of community. Partnership is a cohesion of the Army and family based on understanding of the mission and commitment to each other. Wellness highlights concern for developing strengths, skills, aptitudes and attitudes which make for health in body, mind and spirit. Rather than just meeting basic needs or reacting to dysfunctions, concentration now is on capitalizing on what is working well and projecting it Army-wide. Sense of community places upon each member of the Army a responsibility to make it a better place to live.<sup>70</sup>



The Army's Human Goal and the White Paper philosophy provide an excellent framework by which to analyze the slice of the pie, security deposit initiatives. That is, each initiative will be scrutinized to determine its effect on retention, readiness, partnership, wellness and sense of community. Viewed in these terms, the initiative is not just a program that is a nice thing to do. Instead, it must be specifically designed to help the Army and its families make the transition into the 1990's. It cannot be a piecemeal approach reacting to a dysfunction, but rather, it must be an inherent part of the Human Goal - "The building of wholesome families and communities." Resource requests must be tied to specific desired outcomes such as to promote retention, to provide incentive to reenlist, or to promote sense of community.<sup>71</sup>

#### IX. ANALYSIS OF THE VARIOUS PROGRAMS

The numerous programs can be readily divided into two groups, those providing financial backing or guarantees, and those involving no financial strings. Consideration of the analysis criteria just discussed immediately brings any initiative into question that requires high cost. Several programs fall into this arena.

First is the Nonappropriated Fund (NAF) Program. When the issue of security deposits first arose, the United States Army Community and Family Support Center was tasked to explore the feasibility of using NAFs to cover security deposits.<sup>72</sup> Though the final report has not been filed, the facts, figures and feelings are strongly against such a plan. The implementation of such a plan would cost between 43 and 140 million dollars — money that would be taken from the NAF construction program. Administrative costs would run another 5 to 25 million dollars. A utility deposit program would be an additional cost.<sup>73</sup> Clearly, this is not consistent with the priority to find low cost/high payoff initiatives.

A second program that will probably fall into the high cost area is a pilot program about to be put underway as a result of Congressional legislation. The Honorable Leon Panetta, a United States Congressman from California, has introduced legislation making possible the Security Deposit Indemnity Program.<sup>74</sup> Mr. Panetta's bill provides for pilot indemnity programs to be tested at one installation for each of the four services.

The program appears at first glance to be an answer to soldiers everywhere in the United States who face high security deposits. Rather than the soldier depositing his own money, the Government guarantees the landlord that any damage done or breach of the lease will be financially covered by the U.S. Government. However, three substantial hurdles stand in the program's way. First, like the NAF program, the funding must be taken from someone's budget. The bill reads the government will guarantee compensation "for any breach" of the lease or damage.<sup>75</sup> Such language commits the government to pay not only for the damages that may occasionally be expected, but also for overdue rent or other violations of the lease. Another cost that needs to be computed is the administrative cost to run dispute boards, track down delinquent soldiers, and to actually collect the money back from the soldier. Finance cannot simply withhold pay — it can do so only with a court order or other proper documentation. So, just as with the NAF program, any initiative that requires money be committed is suspect.

The second major obstacle for the Indemnity Program to work is the lack of incentive to join on the part of the landlords. The program sounds good on paper, but it is not as good as the system enjoyed by most landlords today. That is, landlords currently have the security deposit in hand, available instantly at the landlord's discretion. The Indemnity Program requires the landlord exhaust all available remedies before turning to the Government. In a place where occupancy rates are close to 100%, there is

little if any incentive for a landlord to give up his security only to gain administrative headaches and delays in dealings with the Government.

The two hurdles mentioned above as well as the third soon to be discussed are particularly true at Fort Ord where the Army has selected for its pilot program.

Several factors were key in the Army selecting Fort Ord, California as the site for its pilot program. First, Fort Ord is located in Mr. Panetta's district. Second, Fort Ord is in one of the highest cost of living areas in the United States, and rents and deposits are notoriously high. Third, Fort Ord happened to be the site of a much publicized suicide by a teenage boy in August 1984. The boy, a dependent of a soldier, noted his death would make it easier for his mother to feed the rest of the family. The incident, which occurred during the Army's "Year of the Family," undoubtedly brought pressure on both the military and civilian community to act on the problem.<sup>76</sup>

The factors in the Fort Ord selection are mentioned because of their political importance. Had the Army selected a different location, the chances for a successful pilot program might have been considerably higher (even though the initiative does not score well on the low cost/high payoff analysis). This is because the costs of running the program where rents and deposits are already high would naturally tend to make Government outlays to run higher than elsewhere. Also, the occupancy rate in the area around Fort Ord is also high (partially the cause for such high rental rates). Were the program to be tested elsewhere, landlords may have more incentive to participate to solicit tenants from the military community.<sup>77</sup>

Consider now the third hurdle. Other programs exist that accomplish the same thing (or even better). As mentioned before, the traditional collection of security deposits up front is a tried and proven method. More

importantly, programs requiring no financial backing by the government are in use and are successful.

At Fort Ord, a very active Rental Deposit Reduction Program is in operation.<sup>78</sup> The Rental Deposit Reduction Program (discussed later) brings deposits down to where soldiers can afford them, it keeps the soldier financially tied to the care and maintenance of the property, and it puts sufficient money into the landlord's hands to enable the landlord to act immediately. Put simply, the Indemnity Program is facing an uphill battle. From its costs, to its lack of incentives, to its competition, it just does not measure up under the analysis standards previously discussed.<sup>79</sup>

The second category of initiatives includes those where there is no financial guarantees, thereby more readily meeting the low cost/high payoff criteria. The first of these initiatives are increased use of AER and advanced pay. Both of these initiatives provide for payment in full of deposits, but rather than coming directly out of Government funds, the money is given to the soldier and the soldier obligates the funds. Thus, due to signed agreements such as loan packages, there are fewer hassles on collecting the money from the soldier.<sup>80</sup>

#### Army Emergency Relief (AER)

AER is not a new initiative, but rather an instrument already in place that may be used to reduce the security deposit problem. Though AER spends substantial sums in rent related areas, it is categorized under low cost to the Army because it is a private charity organization. No additional Army funds need be allocated to increase the AER program.

A few statistics readily show AER's recent efforts to assist in the rental area. Rent related problems is one of ten categories for which AER grants gifts or loans.<sup>81</sup> In 1983 AER used 4.1 million dollars for rent

related activities.<sup>82</sup> By 1986 the amount had grown to \$13,942,877 which was 47% of the total money used by AER that year. 26,055 soldiers and their families received assistance for rent related problems in 1986, that total being 36% of the people assisted by AER in 1986.<sup>83</sup> The figures show both a substantial increase in the assistance by AER for rental problems, as well as enormous assistance to the Army in general in this area.

Interestingly enough, in spite of the large increase for rent related problems, AER has never had to deny a request for lack of funds. In fact, AER has been able to maintain a substantial reserve in case of mobilization. The inference is clear, and in fact is part of the reason AER makes yearly contribution campaigns — that is, AER has money to lend to soldiers in emergency situations and AER wants to do just that. As a tool of the command — chartered to maintain "the morale and welfare of soldiers" — AER stands ready to assist in reducing the security deposit problems.<sup>84</sup>

Though the figures showing increased use of AER funds for rental problems is impressive, the percentage statistics are difficult if not impossible to interpret in terms of their effect on reducing the security deposit problem. In fact, rather than reducing the problem, the statistics may only indicate the success of advertising campaigns in getting the word out that AER may be used for rental problems. The only way to determine AER's effect on the issue of security deposits would be through the use of a prohibitively expensive manual screen. Thus, AER encourages other initiatives that may reduce the problem, especially when such initiatives are consistent with AER policies. Specifically, AER seeks preventive rather than reactive measures, encourages financial planning, and desires that the soldier assume the responsibility for repaying the debt when it is in the soldier's means to do so.<sup>85</sup>

### Advanced Pay and VHA

The increased use of advanced pay and VHA has also provided assistance to soldiers facing rent related problems. Though somewhat easier to obtain than an AER loan (because one need not show a recommendation from the chain of command or experience an emergency situation), finance is not as flexible on repayments as AER. In either case, the outcome is the same if the soldier can make the deposits and meet the payments.<sup>86</sup>

Both AER and advanced pay are helpful and should continue to be pursued, but neither gets to the perceived problem, high security deposits. If high security deposits are the problem, then AER and advanced pay cure only the symptoms, not the root cause. (See "Recommended Approach" for the completed analysis).

### Deposit by Allotment and Bond Programs

Both of these programs reduce the security deposit problems, but like AER and advanced pay, these programs attack the symptoms of the perceived problem. Deposit by allotment only defers accumulation of the ultimate deposit, and the bond program just pushes the payments on to other servicemembers who pay into the program (by increasing entry fees). A more practical problem, however, is to get landlords and companies to accept the Deposit by Allotment Program, and to find a sponsor for the Bond Program. Again, each of these should be pursued, but not exclusive of other initiatives.

### Credit Union and Deposit Reduction Programs

These programs combine the best of both worlds for landlords and tenants, companies and customers, and the military and surrounding

communities. As a result, these are the programs that are springing up on installations across the country, surviving the turbulence, and are thriving.<sup>87</sup>

These programs strike at the heart of the high rate problem by cutting the deposits to a reasonable, fixed rate. At the same time, however, the tenant/consumer is at risk for the initial deposit, still a substantial sum. The programs have been finding accessible sponsors due to the command's promises to emphasize payments. The programs grow because of the increase in potential customers, and in fact, the program can sell itself. Take Fort Ord for example, where soldiers seeking apartments are encouraged to take sign up packets with them to show potential landlords of the benefits of the program. Also, landlords seeking increased applications may join the program so that their businesses are publicized by the housing office as participating members.<sup>88</sup>

The Deposit Reduction Program has several key factors that distinguish it from other programs attempting to reduce initial outlays of money for new tenants. These factors are (1) keeping a financial interest in maintaining the rental unit for each individual in the program; (2) facilitating higher occupancy rates and increasing chances of recovery for landlords; (3) the program "sells itself"; and (4) it requires supervision by the local housing office.

Keeping a financial interest in maintaining the rental unit is key because of the practical concerns of collecting from a soldier. Finance cannot take money from a soldier for debts incurred "downtown" unless armed with a court order or other proper documentation.<sup>89</sup> The costs, delays and other hassles do not make it worth the landlords' efforts to give up their right to the quick fix remedy a security deposit provides. Thus, a soldier must offer up some initial fee to keep him financially tied to the proper maintenance of the unit. The issue then becomes "how much"?

Several factors need be considered here, such as what is the average damage done to an apartment, how much can soldiers afford to pay, and how soon must the money be in the landlords' hands? At Fort Ord, damages have seldom exceeded one month's rent.<sup>90</sup> As for what soldiers can readily afford to pay, the Fort Ord Housing Office with its Deposit Reduction Program has determined a cap of \$350.

#### X. RECOMMENDED APPROACH

The "Basis of Analysis" topic paragraph stated "the security deposit issue has shown often times it too may be a symptom and not necessarily a root cause of a problem." High security deposits are indeed a problem, but the failure of a soldier to meet a deposit requirement or make a rental payment may be more a symptom of poor planning, improper financial management, or inadequate pay than the high deposit is a root cause. Therefore, a combined attack on high security deposits as both a root cause and a symptom of a more basic problem provides the best chance of meeting the Army's Human Goal objective.

The Army recognizes that the implementation of major future initiatives is dependent on voluntary family participation. Thus, programs must be tailored to meet the needs and personality of individual units and installations. So, while some programs and policies will be required by the Department of the Army, ones such as participation in a security deposit reduction program will be optional. It stands to reason then, to initiate and sponsor those initiatives arising from and solving needs peculiar to individual units and installations.<sup>91</sup>

The Credit Union and Deposit Reduction Programs have arisen from and are solving needs at particular units and installations, as are increased uses of AER and advanced pay. The Credit Union and Deposit Reduction



Programs attack the high security deposit as a root cause, cutting the deposits to acceptable levels. Yet, to accomplish this, the program is labor intensive, falling on the shoulders of personnel at the housing office. It is here the high security deposit can be used as an identifier of a larger problem. Experienced housing personnel can read the symptoms and direct the needy soldier to financial planning, his command, AER or wherever is appropriate. AER and Finance are instruments already in place to provide the soldier necessary funds, provided the soldier first agrees to counseling, budgeting, financial planning or whatever the particular need is. It is through the coordinated use of these programs that installations are meeting with success.

Other approaches are worthy of pursuit, but not at the expense of existing programs. Where some issues identified by the Family Action Plan are highly resource dependent and others require statutory changes, the security deposit issue is one that will be best met by interested, energetic soldiers working through existing programs.

## XI. CONCLUSION

The approaches to resolving the issues presented by high security deposits vary dependent on whether the high security deposit is the root problem or the inability to pay the deposit is a symptom of a larger mismanagement or low pay problem. Regardless of how one analyzes the situation, political and Government initiatives to reduce the problem through resource intensive measures are ill-advised as such programs are not in line with Army objectives.

The Human Goal Objective defined by the Army Family Action Plan gives clear guidance on initiatives to resolve issues identified by the Family Symposia. Low cost/high benefit initiatives must be the priority, and in fact, those are the programs that have met with success in the field. The

Utility Reduction and Security Deposit Reduction Programs are successful because they are fundamentally sound, meet the Army's objectives, and are run and supported by people who know the business.

Now is the time to act. The impact of the tax changes has not yet hit, and the Army has had time, albeit minimal, to experiment with various programs. The "Year of the Family" has now been gone some two years. Leadership in the highest echelons of the Army is about to change,<sup>92</sup> and change, no doubt, will bring new initiatives. Maximum use of the progress achieved should be made, successful programs should be rewarded and publicized, and continued command emphasis should motivate further progress for all installations. Securing favorable tenant programs now — whether it be in local communities or through Government backed programs — may enable the Army to weather future storms.

In implementing the initiatives, an understanding of the various state laws becomes important. The drastic changes in landlord-tenant law are evident from the emergence of legislation regulating such areas as security deposits. Yet, the revolution has been splintered, with individual states tackling the issues in piecemeal fashion. And though future changes are certain to occur, there are no imposing trends to predict the changes yet to come.

This provides the Army with an excellent opportunity to take the initiative and impose solutions to the benefit of the soldier-tenant. In areas where there are no statutory provisions regulating an area of concern, the Army should encourage the local community to adopt programs that have been proven successful in other Army communities. Where a state has legislated in an area of concern, the statutes generally place requirements on landlords and impose maximums—the Army can initiate programs that meet the statutory requirements but are still favorable to the soldier-tenant. Furthermore, the changing of laws is an

ongoing process as evidenced by Rhode Island's cancellation of the interest requirement just this year. In areas where there are large military populations, the changing of existing laws is a realistic possibility. This is particularly true in a situation such as Fort Ord where there is already active involvement by a member of Congress.

The turbulence in landlord-tenant law appears to be settling from the upheaval experienced in the late 1960's and 1970's. It has been eight years since a state has enacted the Uniform Residential Landlord-Tenant Act, and conditions are currently such that dramatic changes in short periods of time are highly unlikely. However, it is now, while states are still in a period of flux, with uncertainty brewing about the effect of new tax laws, that productive change is most possible. The Army should pursue the course of action it is on, publicizing and implementing the Security Deposit Reduction Program Army-wide. Now is the time to exploit the situation to the benefit of the soldier-tenant while the mindsets, community practices and the law are still being settled.

## Footnotes

1. Dep't of Army, Pamphlet No. 608-41, Army Family Action Plan II, paras. 3-1, -3 (May 1985).
2. Abbott, Housing Policy, Housing Codes and Tenant Remedies: An Integration, 56 B.U.L. Rev. 1 (1976).
3. Security deposit: a payment by a tenant to the landlord at the time the lease is executed which is held as a form of insurance against the tenant's failure to pay rent, destruction of the premises, or nonperformance of other covenants in the lease. Blumberg, Application of State Consumer Protection Acts to Landlord-Tenant Practices, 15 Clearinghouse Rev. 399, 415 (1981).
4. Rabin, The Revolution in Residential Landlord-Tenant Law: Causes and Consequences, 69 Cornell L. Rev. 517, 521 (1984).
5. Blumberg, supra note 3, at 415.
6. As the Federal Trade Commission (FTC) directed its attention and enforcement authority to consumer protection in the 1960's, unfair business practices were targeted. The FTC established a model act, "Unfair Trade Practices and Consumer Protection Act" (UTPCPA). Three standards for illegality under the Act are: (1) unfair or deceptive acts or practices in the conduct of any commerce; (2) false, misleading or deceptive acts or practices; and (3) violating any of a list of illegal practices held to violate federal standards. It is readily apparent how the widespread abuse of wrongfully retaining security deposits was soon recognized as an unfair business practice protected by the consumer protection acts. These acts were the predecessor to the warranties of habitability that were soon to follow. Blumberg, supra note 3, at 404.

7. Professor Donahue notes "an extraordinary ferment" in this area in his article, Change in the American Law of Landlord and Tenant, 37 Mod. L. Rev. 242, 242 (1974). The shift has been termed a "transformation". See Glendon, The Transformation of American Landlord-Tenant Law, 23 B.C.L. Rev. 503, 575 (1982) (Landlord-Tenant law has "escaped from the realm of private ordering, in which the stronger party typically has the advantage, and has become subject to regulation 'in the public interest'").

Examples of rights given the tenant (and the corresponding responsibilities placed on landlords) are: maximum limits placed on security deposits, interest requirements, deposited in insured institution requirements, disallowance of commingling funds, timely return of deposit, written accounting and justification for any withholding, right to be present for inspection of premises both initially and at termination, notification of manager's name and address as well as authorized agent for owner, transferee liability notification, codified notification procedures, and ability to collect punitive damages and attorneys' fees for a wrongful withholding.

8. The term revolution is used to signify the great strides taken to equalize the bargaining position of the tenant in relation to the landlord.

In Housing Policy, Housing Codes and Tenant Remedies: An Integration, supra note 2, Abbott calls the changes "revolutionary" because: (1) the changes strike at the core of the relationship in legal and practical terms — lawmakers have significantly modified the landlord's basic rights to determine rent, gain possession, choose tenants, and the right to decide on extent of services; (2) both the courts and legislatures have participated in the revolution; (3) the change has been rapid (particularly between 1968 and 1973) and widespread; and (4) almost all the changes have favored the tenant.

9. The two states with security deposit legislation effective in 1987 are: (1) Rhode Island, § 34-18-19 (eff. Jan. 1, 1987); and (2) Wisconsin. Wisconsin amended chapter Ag. 125, Wis. Adm. Code relating to mobile home parks, to raise security deposits from one month to three months rent or \$350, whichever is less (eff. Jan. 16, 1987).

10. Most state statutes have neutral titles such as "The Residential Landlord-Tenant Act." Some however, like North Carolina, state the obvious by calling it "Tenant Security Deposit Act." As for the rights being given tenants, the statutes have invaded all aspects of the landlord-tenant relationship; creation, performance during its existence, termination, and procedures to remedy breaches. The statutes apply to, regulate, and determine rights, obligations and remedies under rental agreements. Jones, The New Landlord-Tenant Act — Legislative Reform, XXXV, No. 3, R.I.B.J. 5 (1986). See also Abbott, supra note 2, reason 4.

11. The implied warranty of habitability changed the "caveat lessee" mode that was prevalent before 1969. Before 1969, landlords ordinarily had no duty to repair defects, defects now recognized as being, at a minimum, any condition that substantially violates an applicable housing code. Today, virtually all jurisdictions impose such a duty on landlords. (See Blumberg, supra note 3, at 411).

12. Blumberg, supra note 3, at 411.

13. See Marini v. Ireland, 56 N.J. 130, 265 A.2d 526 (1970).

14. See Rabin, supra note 4, 526.

15. Rabin, supra note 4, 526.

16. "Shelter" today includes not merely walls and ceilings, but also adequate heat, light and ventilation, serviceable plumbing facilities, secure windows and doors, proper sanitation and proper maintenance. Javins, supra at 1084. Note, Recovery Under the Implied Warranty of Habitability, 10 Fordham L. Rev. 285, 292 (1982). Note, Knight v. Hallsthammar: The Implied Warranty of Habitability Revisited, 15 Loy. L.A. Rev. 353, 354 n. 4 (1982) (citing and summarizing cases and statutes).

17. Jones, supra note 10, at 5 states that perhaps the most far reaching aspect of the revolution is the inculcation of the obligation of good faith — honesty in fact in the conduct of the transaction concerned — into the relationship.

18. The Uniform Residential Landlord and Tenant Act, 7A U.L.A. 499 (1978) (last amended 1974) [hereinafter cited as URLTA] § 2.104(c), (d), provides that although a landlord and tenant agree tenant will make repairs, the agreement is enforceable only if it is "entered into in good faith and not for the purpose of evading the obligations of the landlord."

19. R. Schoshinski, American Law of Landlord and Tenant, 449 (1980).

20. Cunningham, The New Implied and Statutory Warranties of Habitability in Residential Leases: From Contract to Status, 16 Urb. L. Ann. 3 (1979). Similarly, Professor Glendon, supra note 7, at 575-6, concludes the legal relation between landlord and tenant depends on status rather than private agreement.

21. See Michelman, Property as a Constitutional Right, 38 Wash & Lee L. Rev. 1097, 1113-14 (1981), arguing the often recognized property right for a tenant to remain on the premises after a lease has expired is a right entitled to constitutional protection. See also Radin, Property and Personhood, 34 Stan. L. Rev. 957, 994 (1982) (law should grant tenure during good behavior, regardless of lease term).

22. Those five states are: Alabama, Indiana, Mississippi, West Virginia, and Wyoming.

23. Those nineteen states are: Alaska, Arizona, Delaware, Florida, Hawaii, Iowas, Kansas, Kentucky, Montana, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Tennessee, Virginia and Washington.

24. The URLTA, supra note 18, was approved by the National Conference of Commissioners to serve as a model. Every state to enact it has made substantial reforms.

25. See note 18.

26. The Soldiers and Sailors Civil Relief Act (SSCRA) deals with residential leases, not commercial leases. (This is similar to most state statutes). Therefore, "residential" is implied in the Prerequisites section. The SSCRA authorizes a soldier to terminate a lease made before entering the military by giving a thirty day notice. It does not allow a soldier to break a lease after the soldier enters the service, even if the soldier gets orders elsewhere. For this reason, it is important to always ensure a "military clause" is included in leases.

Other situations under which the state statutes generally do not apply are tenancy at will situations and oral leases. The summaries provided in this paper are directed toward the typical year to year leases that most soldiers encounter.

27. Almost all states specifically provide that security deposits will not be retained for normal wear and tear.



28. The landlord has the burden of proof to show the tenant was responsible for the damages and that the amount withheld was proper. Also, virtually all states impose upon the landlord a warranty of habitability.

29. Generally, where double or treble damages are authorized, it is only in cases where the security deposit was wrongfully withheld and the landlord had no reasonable basis for the withholding. Also, the penalties do not usually apply when the tenant abandons the premises without giving the required notice or prior to the termination of the lease.

30. Generally, tenants have the following obligations: (1) keep the unit reasonably neat and clean; (2) pay rent promptly; and (3) do not create a nuisance. There is also an implied obligation (specifically stated by some statutes) for the tenant to maintain the dwelling unit. Also, tenants can not apply their security deposit to their last month's rent. (To do so may result in losing the deposit and still owing the rent).

31. The usual situation is that the security deposit is a debt. That is, the landlord owns it, can commingle it with personal funds, and in fact, use it for the landlord's own purposes. If the security deposit acts as a pledge, the landlord becomes a bailee. Bailees are not supposed to commingle a pledge with personal assets, but where the pledge is fungible (as is money) commingling is generally permitted. Though the landlord is not to make personal use of a pledge, the landlord has no duty to make the fund productive. If the fund is productive, the tenant gets the income. The pledge concept best fits the approximate intent of most security deposit situations. When the security deposit is a trust, the landlord has fiduciary responsibilities, such as to make the fund productive. This situation produces an inherent conflict of interest because the landlord has an interest in the deposit.

32. States with interest requirements are: Arkansas, Connecticut, District of Columbia, Florida, Illinois, Iowa, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, and Virginia.

33. Michigan.

34. Kansas, Rhode Island, Texas, and Washington.

35. Alaska, Arkansas, California, Connecticut, Iowa, Maine, Maryland, Missouri, North Carolina, Pennsylvania, and Virginia.

36. Kansas, Michigan, New Jersey.

37. Delaware, District of Columbia, Hawaii, Massachusetts, Nebraska, New Hampshire, New Mexico, North Dakota, Rhode Island, South Dakota.

38. Alaska, Connecticut, Delaware, Florida, Georgia, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, Tennessee, Washington.

39. Alaska, Connecticut, Florida (in certain cases), Iowa, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Dakota, Tennessee, Washington.

40. See footnote 18.

41. Those nine states are: Alaska, Delaware, Florida, Iowa, Kentucky, North Carolina, Oklahoma, Tennessee, and Washington.

42. Those ten states are: Arizona, Hawaii, Kansas, Montana, Nebraska, Nevada, New Mexico, Ohio, Oregon, and Virginia.

43. Those eleven states are: Connecticut, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Dakota, and Pennsylvania.

44. See note 37.

45. See notes 32 and 33.

46. See note 38.

47. See note 39 for a listing of states that do not permit commingling. Michigan and Hawaii (and Florida under certain circumstances), permit commingling.

48. Goetz, Wherefore the Landlord-Tenant Law "Revolution"? — Some Comments, 69 Cornell L. Rev. 592 (1984).

49. For a discussion of the issues by a panel of experts see Terrell, Edited Transcript of Proceedings of the Liberty Fund, Inc. Seminar on the Common Law History of Landlord-Tenant Law (Law and Economics Center, Emory University, March 1983), 69 Cornell L. Rev. 623 (1984).

50. Gramm-Rudman has already caused ever increasing scrutiny of Government backed programs. For example, the Department of Housing and Urban Development (HUD) has announced an expected 10% cutback in federally supported new housing starts. Blumberg, supra note 5, at 402.

51. See Terrell, supra note 49.

52. Rabin, supra note 4, at 520.

53. Berger, The New Residential Tenancy Law - Are Landlord Public Utilities? 60 Neb. L. Rev. 707, 749. See also Hartman, Kessler & Le Gates, Municipal Housing Code Enforcement and Low-Income Tenants, 40 J. Am. Inst. of Planners 90 (1974), reprinted in Housing Urban America 560 (J. Pynoos, R. Schafer & C. Hartman eds. 2d ed. 1980); L. Friedman, Government and Slum Housing (1968); and Meyers, The Covenant of Habitability and the American Law Institute, 27 Stan. L. Rev. 879 (1975).

54. Rabin, supra note 4, at 558.

55. Id. at 558. To illustrate this point Rabin cites an example from Professor Meyers, supra note 53, at 879 (following a fact pattern from the Restatement (Second) of property):

Landlord leases an apartment to tenant on a month-to-month basis for \$30 per month. The apartment is located in a slum and does not comply with the housing code in several important respects. Both the landlord and tenant are aware of the violations but agree to enter into the lease anyway.

Under a statutory warranty of habitability, the landlord would still have to provide habitable premises and the tenant could rely on unconscionability or public policy arguments to enforce the warranty. In summary, objections to such a situation are: (1) some proportion of the substandard units would be upgraded and rents would be raised to cover the costs. Tenants would be forced to pay more or would be forced out, thereby creating a greater demand for lower-priced, lower quality housing. (2) Some tenants will temporarily benefit, but this component of the housing stock will retire sooner than would otherwise be the case due to lower return for the landlords. This will discourage new investment in low-rent housing. (3) The third portion will be abandoned as soon as the income will not cover the expenses.

56. Though not comprehensive in nature, Wisconsin has also recently amended its statute concerning Mobile Home Park security deposits (see note 9). Just as Rhode Island's action to eliminate the requirement to pay interest goes against the grain of those states that have addressed the matter, Wisconsin's raising the maximum on security deposits is contrary to most states limiting action.

57. See note 23.

58. Iowa Code Ann. §§ 562A.1, -.37 (Supp. 1986) (eff. Jan. 1, 1979).

59. Letter from Major General Robert M. Joyce to Army Installation Commanders (Dec. 20, 1985) (discussing security deposits).

60. Dep't of Army, Pamphlet No. 608-41, para. 2-2a (May 1985).

61. Id. at para. 2-3(a).

62. Id. at para. 3-3h. The security deposit action is described in the regulation as follows:

h. Security Deposits (DA CF and DA CA).

(1) Issue. PCS moves create financial hardships for soldiers, particularly those serving in the lower pay grades. One of the more significant expenses associated with establishing a new residence is payment of security deposits often required by landlords and utility companies for such services as electricity, gas, telephone, water, and rent security. Some Army installations have been successful in negotiating agreements with local utility companies which waive payment of utility deposits for service members.

(2) Required action.

(a) DA CF will review the issue and develop a strategy to dreplicate a "no deposit" arrangement to the widest extent possible. Strategy will be completed by 1 May 1985.

(b) Explore the possibility/feasibility of NAF making/guaranteeing payment of housing/utility deposits. Strategy will be completed by 1 May 1985.

(c) DACA will explore the possibility of obtaining authority for the Government to make/guarantee payment of housing/utility deposits.

63. Dr. Richard Fafara is the Army's point of contact for the security deposit initiative. His office is located at the Hoffman Building in Alexandria, Va. His autovon number is 221-6789.

64. Letter from Gail H. McGinn to Army Installation Commanders (Jan. 13, 1987) (discussing security deposits).

65. Letter from Dr. Richard Fafara to Army Installation Commanders (Dec. 12, 1986) (discussing security deposits).

66. Telephone interview with Dr. Richard Fafara, Program Analysis and Evaluation Office (Mar. 24, 1987).

67. Letter from Congressman Panetta to Captain Warner (Jan. 27, 1987) (discussing the Security Deposit Indemnity Program Legislation).

68. Family Action Plan Memorandum, Section 1, Background (1984). This memorandum gives a background to the entire Family Action Plan, states the Plan's philosophy, directs responsibilities, lists resources, describes the research, analysis, evaluation and implementation procedures, and gives criteria for future initiatives. It is the forerunner of the DA Pam 608-41.

69. Id. at 1.

70. Id. at 2-3.

71. Id. at 45.

72. Interview with Dr. Richard Fafara, Program Analysis and Evaluation Office (Jan. 1987).

73. Letter from Major General Joyce to Army Installation Commanders (Dec. 20, 1985) (discussing security deposits).

74. H.R. 4840, 99th Cong., 2d Sess. (May 15, 1986) was introduced "to provide a rental housing lease indemnity program by the Department of Defense." It was referred to the Committee on Armed Services, and then amended to the Department of Defense Authorization for Fiscal Year 1987.

75. Id. at 2.

76. Interview with Colonel Harmon, Army Emergency Relief, Alexandria, Virginia (Mar. 1987).

77. Interviews with Dr. Fafara, Program Analysis and Evaluation Office (Jan. 1987), CPT Karen Vanaan, Office of the Staff Judge Advocate, Fort Ord, California (Feb. 1987), and SSG Kelly, Housing Office Fort Ord, California (Mar. 1987).

78. The teenage boy's suicide in 1984 peaked community interest, both military and civilian, in the financial plight of lower enlisted soldiers in the Fort Ord area. Meetings involving Department of the Army level personnel were held at Fort Ord to rectify the perceived problems. One of the issues identified here was again, security deposits.

As a result, the Housing Office was tasked to implement whatever programs it could to ease the problem. SFC Jackson of the Fort Ord Housing Office spearheaded a Security Deposit Reduction Program. His program is the model summarized in the text. SFC Jackson's replacement is SSG Kelly, and MSG Covington just implemented a Utility Deposit

Reduction Program on 2 March 1987. All of these men seemed excited about the programs and undoubtedly, the success of the programs thus far has been largely dependent on their initiative.

The success of the Rental Reduction Deposit Program is indicated by participation by landlords and soldiers in the program. In the program's two years of existence, 225 property management memorandums of understanding representing 689 landlords have been signed with the Fort Ord Housing Office. Approximately one half of those were obtained by the Housing Office personnel soliciting the landlords one on one. The other half were landlords who heard of the program and came to the Housing Office.

The awareness and popularity of the program is growing rapidly. In October 1986, 42% of the soldiers processing through Housing at Fort Ord chose to rent from landlords participating in the program. By February 1987, that percentage had grown to 69%. With statistics such as these, it becomes evident why landlords seek the Housing Office to join.

79. Other problems exist with this particular bill and its implementation at Fort Ord. Planning meetings held in February and March 1987 between Housing Officials, Finance Personnel, the Staff Judge Advocate and other key players showed numerous details must first be overcome before the program could be initiated. Among the problems aired were: where the money was to come from (out of which pot - and if appropriated funds were to be used, none had yet been committed); how was finance to collect from a soldier without a court order or other appropriate paperwork; who was to comprise the dispute board and how was the groundwork for its operation to be established; and potential for abuse of the system by landlords who either intentionally wait for a soldier to leave before seeking compensation or who claim higher settlements against the government than they would against an individual soldier.



80. Interview with Major Turner, Finance Office, Ft. Ord, California (Mar. 1987).

81. Interview with Colonel Harmon, Army Emergency Relief, Alexandria, Virginia (Mar. 1987).

82. Dep't of Army Message No. 1721402 Jan. 1985, Subject: Rental and Utilities Deposit Waiver for Service Members.

83. Interview with Colonel Harmon, Army Emergency Relief, Alexandria, Virginia (Mar. 1987).

84. Id.

85. Id.

86. Interviews with Colonel Harmon, supra note 76, and Major Turner, supra note 80.

87. The following TRADOC installations have Utility Deposit Waiver Programs: Belvoir, Benjamin Harrison, Benning, Bliss, Carlisle Barracks, Dix, Eustis, Gordon, Hamilton, Jackson, Knox, Leavenworth, Lee, McClellan, Monroe, Rucker, Sill, and Story. FORSCOM installations with Utility Deposit Waiver Programs are: Bragg, Campbell, Carson, Devins, Drum, Hood, Indiantown Gap, Irwin, Lewis, McCoy, McPherson, Meade, Panama, Polk, Presidio, Richardson, Riley, Sam Houston, Sheridan, Stewart. Other commanders include: Aberdeen Proving Ground, Lexington Blue Grass, Picatinny Arsenal, Seneca, Sharpe, Sierra, WESTCOM, and INSCOM (Huachuca).

Rental Reduction Programs are in place at: Benning, Jackson, Bragg, Carson, Irwin, Ord, Polk, Riley, Stewart, Monmouth and Sacramento.

88. See note 78 for supporting statistics.

89. Interview with Major Turner, supra note 80.

90. Interview with SSG Kelly, supra note 77.

91. Family Action Plan Memorandum, supra note 68, at 43.

92. General Wickham, Chief of Staff of the Army, and Command Sergeant Major of the Army Morrell are due to retire in the summer of 1987.